

ARIZONA HOUSE OF REPRESENTATIVES  
Forty-eighth Legislature - Second Regular Session

## MAJORITY CAUCUS CALENDAR

April 1, 2008

| Bill Number  | Short Title  | Committee                              | Date | Action |             |
|--|--|--|------|--------|-------------|
| <b>Committee on Commerce</b>                             |  |  |      |        |             |
| <b>Analyst: Diana O'Dell</b>                             |  | <b>Assistant Analyst: Tony DeMarco</b> |      |        |             |
| SB 1038  | counterfeit marks; intellectual property                   |  |      |        |             |
| SPONSOR:   | HARPER   | COM                                    | 3/19 | DPA    | (9-0-0-1-0) |
| SB 1228  | charitable funds; management                               |  |      |        |             |
| SPONSOR:   | LEFF   | COM                                    | 3/19 | DP     | (9-0-0-1-0) |
| <b>Committee on Education (K-12)</b>                     |  |  |      |        |             |
| <b>Analyst: Jennifer Anderson</b>                        |  | <b>Intern: Katherine Nikas</b>         |      |        |             |
| SB 1025  | scholarships; disabled pupils; good cause                  |  |      |        |             |
| SPONSOR:   | GRAY L   | ED                                     | 3/12 | DP     | (5-4-0-1-0) |
| SB 1111  | <del>classroom site fund; assessment plan</del>            |  |      |        |             |
|  | (Now: performance based compensation system; notification) |  |      |        |             |
| SPONSOR:   | GRAY L   | ED                                     | 3/12 | DPA    | (8-1-0-1-0) |
| SB 1172  | unorganized territory; adjacent school districts           |  |      |        |             |
| SPONSOR:   | GRAY L   | ED                                     | 3/19 | DP     | (8-0-0-2-0) |
| SB 1218  | <del>joint common schools; technical correction</del>      |  |      |        |             |
|  | (Now: education database; pupil privacy)                   |  |      |        |             |
| SPONSOR:   | JOHNSON  | ED                                     | 3/19 | DP     | (8-0-0-2-0) |
| SB 1229  | <del>schools; diabetes treatment</del>                     |  |      |        |             |
|  | (Now: diabetes treatment; schools)                         |  |      |        |             |
| SPONSOR:   | ALLEN  | ED                                     | 3/19 | DP     | (8-0-0-2-0) |
| <b>Committee on Financial Institutions and Insurance</b> |  |  |      |        |             |
| <b>Analyst: Stacy Weltsch</b>                            |  | <b>Intern: Kimberlee Heywood</b>       |      |        |             |
| SB 1185  | credit report; score; security freeze                      |  |      |        |             |
| SPONSOR:   | AGUIRRE  | FII                                    | 3/31 | DP     | (9-0-0-1-0) |
| <b>Committee on Health</b>                               |  |  |      |        |             |
| <b>Analyst: Dan Brown</b>                                |  | <b>Intern: Matthew Flannery</b>        |      |        |             |
| SB 1091  | Arizona medical board                                      |  |      |        |             |
| SPONSOR:   | ALLEN  | HEALTH                                 | 3/12 | DPA    | (7-1-0-2-0) |
| SB 1236  | homeopathic board; omnibus                                 |  |      |        |             |
| SPONSOR:   | O'HALLERAN   | HEALTH                                 | 3/26 | DP     | (8-0-0-2-0) |
| SB 1329  | AHCCCS; self-directed care services                        |  |      |        |             |
| SPONSOR:   | ALLEN  | HEALTH                                 | 3/19 | DP     | (7-0-0-3-0) |

**Committee on Higher Education****Analyst: Ingrid Garvey****Intern: Ellen Craswell**

SB 1012 postsecondary education programs; PEG; PFAP  
 SPONSOR: GRAY L HED 3/18 DPA (8-0-0-2-0)

**Committee on Human Services****Analyst: Eden Rolland****Intern: Janice Almond**

SB 1049 ~~adoption; safe haven infants; grandparents~~  
 (Now: safe haven providers; notices)  
 SPONSOR: GRAY L HS 3/27 DP (7-0-0-3-0)  
 SB 1112 divorce; disposition of property  
 SPONSOR: GRAY L HS 3/20 DP (8-0-0-2-0)

**Committee on Judiciary****Analyst: Kristine Stoddard****Intern: Adrienne Bowers**

SB 1053 ~~elections; counting center; observation~~  
 (Now: elections; observation; counting center)  
 SPONSOR: GRAY C JUD 3/27 DPA (9-0-0-1-0)  
 SB 1055 civil rights advisory board; continuation  
 SPONSOR: GRAY C JUD 3/27 DP (8-0-0-2-0)  
 SB 1059 elections; counting center video; multiple  
 SPONSOR: HARPER JUD 3/27 DP (8-0-0-2-0)  
 SB 1067 escape; definition  
 SPONSOR: GRAY C JUD 3/27 DP (8-0-0-2-0)  
 SB 1068 criminal appeals  
 SPONSOR: GRAY C JUD 3/27 DP (7-1-0-2-0)

**Committee on Natural Resources and Public Safety****Analyst: Ralene Whitmer****Intern: Bethany Slim**

SB 1057 law enforcement officer; definition; representation  
 SPONSOR: GRAY C NRPS 3/19 DP (9-0-0-1-0)  
 SB 1108 homeland security advisory councils; membership  
 SPONSOR: HARPER NRPS 3/26 DP (9-0-0-1-0)  
 SB 1167 funeral escort vehicles  
 SPONSOR: GRAY L NRPS 3/26 DPA/SE (8-2-0-0-0)

**Committee on Public Institutions and Retirement****Analyst: Magdalena Jorquez**

SB 1225 ASRS; federal conforming changes  
 SPONSOR: GORMAN PIR 3/17 DP (10-0-0-0-0)

**Committee on Transportation****Analyst: John Halikowski****Intern: Rick Hovden**

SB 1083 gold star family license plates  
 SPONSOR: WARING TRANS 3/27 DPA/SE (9-1-0-0-0)  
 SB 1165 salvage title; stolen vehicle title  
 SPONSOR: GORMAN TRANS 3/27 DPA (10-0-0-0-0)  
 SB 1473 logo sign programs; ADOT  
 SPONSOR: GOULD TRANS 3/27 DP (9-0-0-1-0)

**Committee on Water and Agriculture****Analyst: Kathi Knox****Assistant Analyst: Liz Dunfee****Intern: Sarah Cuneo**

|          |  |    |      |     |             |
|----------|--|----|------|-----|-------------|
| SB 1120  | navigable stream adjudication commission; continuation |    |      |     |             |
| SPONSOR: | FLAKE  | WA | 3/27 | DP  | (6-0-0-4-0) |
| SB 1158  | continuation; veterinary medical examining board       |    |      |     |             |
| SPONSOR: | GRAY C   | WA | 3/27 | DP  | (7-0-0-3-0) |
| SB 1181  | Arizona beef council; sunset continuation              |    |      |     |             |
| SPONSOR: | FLAKE  | WA | 3/27 | DPA | (7-0-0-3-0) |
| SB 1373  | poultry husbandry                                      |    |      |     |             |
| SPONSOR: | BURNS  | WA | 3/27 | DP  | (7-0-0-3-0) |
| SB 1394  | racing; commission; department; continuation           |    |      |     |             |
| SPONSOR: | GRAY C   | WA | 3/27 | DP  | (7-0-0-3-0) |



# HOUSE OF REPRESENTATIVES

SB1038

counterfeit marks; intellectual property

Sponsor: Senator Harper

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DPA Committee on Commerce

X Caucus and COW

House Engrossed

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SB 1038 modifies statutes pertaining to the unlawful use of sounds and images in recordings and the use of counterfeit marks upon goods and services.

## History

A.R.S. §13-3705 proscribes the unauthorized reproduction or sale of sounds or images in sound and audiovisual recordings, and prescribes the penalties for such violations.

Arizona law specifies one of six ways a person is guilty of unlawful reproduction and sale of sounds and images. In general, an individual must *knowingly* manufacture, distribute, sell, and/or copy a tangible item in which sounds or images are recorded (article), including the article's outside packaging, without the consent of the owner.

The number of articles involved in the violation determines the criminal penalty for unauthorized copy or sale. Current law differentiates between sounds and images on a sound recording and audiovisual recordings in criminal classification, as follows:

- For *sound recordings*, it is a class 3 felony in instances involving the copying or sale of 1,000 or more articles; a class 6 felony, for 10 or more articles but less than 1,000; and, a class 1 misdemeanor for less than 10 articles.
- For *audiovisual recordings*, it is a class 3 felony for the copying or sale of 100 or more articles; a class 6 felony for 10 or more articles but less than 100; and, a class 1 misdemeanor for less than 10 articles.

Upon conviction of unlawful reproduction or sale, a court currently is authorized to order forfeiture and destruction of the articles and packaging, as well as the device or equipment used to manufacture or distribute such materials.

In addition, Arizona law protects against the unauthorized use of intellectual property in the form of counterfeit marks on any good or service. Intellectual property, as defined by statute, means any trademark, service mark, trade name, label, term, device, design or word that is adopted or used by a person to identify that person's good or services.

A.R.S. §44-1453 makes it illegal to affix counterfeit marks to any good or service. Counterfeit marks include the unauthorized reproduction of intellectual property knowingly attached to a good or service. A person who knowingly and with the intent to sell, distribute, advertise, or

possess any items or services with counterfeit marks is generally guilty of a class 1 misdemeanor, with exceptions for degrees of severity which include prior convictions, retail value, and volume of the items.

**Provisions**

***Unlawful copying or sale of sounds or images from recording devices:***

- Requires the court, upon conviction of a defendant, to order restitution to an injured party (e.g. the owner, lawful producer, or trade association representing the owner or producer) for violation of copyrighted sounds and visual images.
- Specifies the restitution be based on the aggregate wholesale value of the lawfully manufactured and authorized recorded devices, including investigative costs relating to the violation.
- Conforms the threshold levels for the number of *sound* recording articles constituting a felony or misdemeanor to those of *audiovisual* recordings, as follows:
  - For a class 3 felony, 100 or more articles.
  - For a class 6 felony, more than 10 articles but less than 100.
  - For a class 1 misdemeanor, less than 10 articles.
- With regard to the unlawful manufacture and distribution of articles and outside packaging, adds *label* as part of the criteria constituting outside packaging (currently includes cover, box, or jacket).

***Counterfeit marks:***

- Clarifies that a counterfeit mark violation can include any component of a good or service by defining *item*, as used in the section, to include the following:
  - Any component designed, marketed, or otherwise intended to be used on or in connection with any good or service; and,
  - Any component of a finished product.

**Amendments**

**Commerce Committee**

- Defines *aggregate wholesale value* as the average wholesale value of lawfully manufactured and authorized sound and audio visual recordings corresponding to the non-conforming recorded devices involved in the offense.
- With regard to a court's determination of restitution, stipulates that proof of the specific aggregate wholesale value of each non-conforming device is not required.



# HOUSE OF REPRESENTATIVES

SB 1228

charitable funds; management

Sponsor: Senator Leff

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DP Committee on Commerce

X Caucus and COW

House Engrossed

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SB 1228 repeals statutes relating to *Investments for Eleemosynary Purposes* and replaces the statutory language with a new chapter titled *Management of Charitable Funds*.

## History

The National Conference of Commissioners on Uniform State Laws (NCCUSL) adopted the Uniform Management of Institutional Funds Act (UMIFA) in 1972 to serve as model legislation for States to regulate the management and use of investments held by charitable institutions and funds. That legislation was ultimately enacted in Arizona in 1987 and is codified in Title 10, Chapter 41, Arizona Revised Statutes. The UMIFA generally applies to colleges, universities, hospitals, religious organizations and other institutions of eleemosynary nature. The provisions apply to a governmental organization only to the extent that it holds funds for the stated purposes.

Current law defines pertinent terms, provides direction for expenditures, investment and reinvestment of monies to carry out the purposes of the endowment fund, as well as any stated restrictions, subject to the donor's direction and authorization. Further, the statutes authorize and outline limitations for the governing board to delegate to its committees, officers or employees, the authority to contract with independent investment advisors or counsel, managers, banks or trust companies.

The governing board means *the body responsible for the management of an institution or an institution fund*. A.R.S. §10-11806 specifically requires the governing board to exercise ordinary business care and prudence under the prevailing circumstances at the time of the action or decision. The governing board must consider long and short term investments, present and anticipated financial requirements, expected return on investment, price level trends and economic conditions. With regard to limitations placed on a gift instrument, A.R.S. §10-11807 permits the governing board to release any restriction upon written consent of the donor; however, absent that consent, statute authorizes the governing board to apply to the superior court for the release. The State Attorney General (AG) must be notified, and the court may release the restriction if it finds it obsolete, inappropriate or impractical.

In 2006, the NCCUSL revised UMIFA by adopting the Uniform Prudent Management of Institutional Funds Act (UPMIFA), as reflected in SB 1228.

**Provisions**

- Repeals the statutes pertaining to investments for eleemosynary (charitable) purposes and replaces them with new language relating to the management of charitable funds.
- Redefines *endowment fund*, *gift instrument*, *institution*, and *institutional fund*.
- Provides a definition for *person*, *program-related asset*, and *record*.
- Deletes the definitions of *governing board* and *historic dollar value*.
- When managing and investing institutional funds:
  - Subject to the donor's wishes, requires consideration of the charitable institution and its purpose when managing and investing an institutional fund.
  - Requires each person to act in good faith and with proper loyalty.
  - Authorizes only costs that are reasonable and appropriate according to the assets, the institution's purpose and the available skills.
- Allows an institution to pool two or more funds for purposes of investment and management.
- Absent a gift instrument, outlines the specific factors to be considered when managing and investing funds. The decisions about an individual asset must not be made in isolation, but rather in consideration of the portfolio of investments as a whole and as part of a strategy with risks and return objectives that are reasonably suited to the fund and the institution. Outlines requirements for diversification of investments.
- Requires the institution to carry out decisions that are made concerning retention or disposition of property within a reasonable length of time after receiving the property. Additionally, asserts a person's duty to utilize special skills or expertise in managing and investing institutional funds.
- Subject to a donor's gift instrument, permits an institution to appropriate for expenditure or accumulate an endowment fund as the institution deems prudent for the benefits, purposes, and duration for its establishment. Outlines factors for consideration, specific limitations and requirements.
- Allows an institution to delegate to an external agent the management and investment of an institutional fund, subject to any limitations. Requires the institution to act in good faith in its selection of the agent, establishment of the scope and terms of the delegation. Additionally, stipulates the institution is not liable for the delegated decisions or actions of the agent. Outlines the duties and responsibilities of the agent.
- Permits an institution to delegate management and investment functions to its committees, officers or employees as authorized by Arizona law.

- If the donor consents, allows an institution to release or modify a restriction placed on a gift instrument pertaining to the management, investment or purpose of an institutional fund. Any release or modification does not permit a fund to be used except for a charitable purpose.
- On application of an institution, permits the court to modify a restriction that has become impracticable, wasteful, impairs the management or investment of the fund, or if the modification furthers the purposes of the fund. The institution must notify the AG. To the extent practicable, requires modifications according to the donor's intention.
- If an institution determines a restriction in a gift instrument on the management, investment or purpose of an institutional fund is unlawful, impracticable, impossible to achieve or wasteful, allows the institution, after 60 days' notification to the AG, to release or modify the restriction if all of the following apply:
  - The institutional fund subject to the restriction has a total value less than \$50,000.
  - More than 20 years have elapsed since the fund's establishment.
  - The institution uses the property in a manner consistent with charitable purposes expressed in the gift instrument.
- Contains an applicability clause that states the provisions apply to institutional funds existing on or established after the general effective date. For institutional funds existing on the general effective date, applies the provisions only to decisions made or actions taken after that date.



# HOUSE OF REPRESENTATIVES

## SB 1025

scholarships; disabled pupils; good cause

Sponsors: Senator Gray L: Representative Nichols

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**DP** Committee on Education (K-12)

**X** Caucus and COW

House Engrossed

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SB 1025 permits the Arizona Department of Education (ADE) to grant good cause exceptions to the eligibility requirements for the Arizona Scholarships for Pupils with Disabilities Program (Program).

### History

Students with disabilities who require specialized instruction are provided with that instruction and any accommodation according to a written plan called an Individualized Education Program (IEP). A student's IEP is a legal document which, in part, sets forth the duties and responsibilities of the school district and staff regarding that student. It is the responsibility of special educators, regular education teachers, administrators, counselors, and other professional educators to be thoroughly familiar with the provisions of the IEP for each of their students with disabilities.

As established by Laws 2006, Chapter 340, the Arizona Scholarship for Pupils with Disabilities Program (Program) provides pupils with an IEP the option of either attending any public school of their choice or receiving a scholarship to any qualified school of their choice. The parent may remove the pupil from the qualified school and transfer the pupil to another qualified school at any time.

Arizona Revised Statutes (A.R.S.) § 15-891.04 stipulates that the maximum scholarship granted for a pupil with a disability cannot exceed the Base Support Level funding the student may receive under the Basic State Aid funding formula detailed in A.R.S. § 15-943. This formula can vary from about \$5,000 to \$25,000 per pupil depending on the Group B weight the pupil has been categorized under. The Program received \$2.5M in initial funding in FY 2006-07 and an additional \$2.5M in FY 2007-08.

### Provisions

- Allows ADE to provide good cause exceptions to the Program's eligibility requirements if a pupil was removed from a school district or charter school due to a medical or mental crisis that required hospitalization, an out of home living educational experience, or mental health care beyond the capabilities of the school.
- Requires a school to have available space and the resources to comply with a pupil's IEP in order to qualify as an option for the purpose of notifying a parent of all available options for the education of a pupil with a disability within the school district of residence.
- Makes technical and conforming changes.



# HOUSE OF REPRESENTATIVES

SB 1111

~~classroom site fund; assessment plan~~

(NOW: performance based compensation system; notification)

Sponsor: Senator Gray L

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DPA Committee on Education (K-12)

X Caucus and COW

House Engrossed

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SB 1111 changes the annual submission process regarding a school district's performance-based compensation system and assessment plan, and allows the Arizona Department of Education (ADE) to withhold monies from school districts that fail to comply.

## History

Proposition 301 (Prop 301), passed by voters in November of 2000, instituted a state-wide sales tax increase to fund additional resources to education programs, including teacher performance compensation, teacher base salary increases, and for maintenance and operation (M&O) purposes. Specifically, 40% is allocated for performance based compensation, 20% is allocated for base salary increases, and 40% is allocated to six specific M&O purposes including class size reduction, AIMS intervention programs, and dropout prevention programs. As a result, the Classroom Site Fund (CSF) was established in FY 2001-02 to account for the portion of state monies provided to school districts for these purposes.

Arizona Revised Statutes (A.R.S.) § 15-977 requires each school district governing board to adopt a performance-based compensation system (System) for the purpose of allocating funding received from the CSF. The System must include: a) school district and school performance, b) measures of academic progress, c) dropout, graduation and attendance rates, d) ratings of school quality by parents and students, and e) input from teachers and administrators. Through December 31, 2009, each school district must develop an annual assessment plan for its System and submit a copy of the plan and the school district's adopted System to ADE by December 31 each year.

Laws 2005, Chapter 305, established the Arizona Performance Based Compensation System Task Force (Task Force) within the State Board of Education (SBE). The twelve-member Task Force is required to conduct annual evaluations of one quarter of the school districts' performance based compensation systems. The evaluation must assess the relationship between the components of an individual school district's System and the improvement in: a) individual student progress and achievement, b) achievement of school district and school site goals, c) teacher professional development, d) teacher job satisfaction, and e) parent ratings of the quality of education at both the school and district level. The Task Force must provide a report to the school districts that were evaluated which assesses the effectiveness of each school district's System and includes any recommendations for improvement. The Task Force is also charged

## **SB 1111**

with providing recommendations to SBE regarding the implementation, operation, and monitoring of the Systems before December 31, 2010.

### **Provisions**

- Removes the requirement for school districts to annually submit an assessment plan for their adopted System.
- Modifies the submission requirements regarding each school district's adopted System as follows:
  - If the school district did not make any changes to its System in the prior year, the school district must notify ADE that the previous submittal reflects the district's current System.
  - If the school district has made changes to its System from the prior year, the school district must submit the most recently adopted System to ADE.
- Requires ADE, by November 1 of each year, to notify each school district that it is required to submit a copy of its System by December 31.
- Allows ADE to withhold up to ten percent of state funds to a school district that does not comply with the December 31 submission deadline.
- Makes technical and conforming changes.

### **Amendments**

#### **Education (K-12)**

- Requires ADE to notify the SBE if they have not received a copy of a school district's performance-based compensation system by December 31.
- Allows the SBE to direct the Superintendent of Public Instruction to withhold monies from the school district.



# HOUSE OF REPRESENTATIVES

SB 1172

unorganized territory; adjacent school districts

Sponsor: Senator Gray L

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**DP** Committee on Education

**X** Caucus and COW

House Engrossed

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SB 1172 requires an unorganized territory to join both a common and union high school district if an adjacent common school district is within the boundaries of a union high school district.

## History

An unorganized territory is a region of the state that is not within the borders of an organized school district. A pupil who resides in an unorganized territory may apply to the county school superintendent for a certificate of education convenience (CEC) authorizing the pupil to attend a school in an adjoining school district or county. Under Arizona Revised Statutes (A.R.S.) § 15-825.02, if the annual number of CECs or the annual number of students attending an adjacent school district from a single unorganized territory exceeds 150, the Superintendent of Public Instruction (SPI) is required to notify the appropriate county school superintendent. The county school superintendent must then notify the residents of the unorganized territory that they are required to join an adjoining school district and prepare a ballot question to determine whether to join an existing adjacent school district to be voted on at the next general election by the residents.

A.R.S. § 15-445 provides additional guidelines to the county school superintendent prior to conducting an election. The county school superintendent is required to a) conduct at least two public meetings on the issue, b) identify which adjacent school districts accept at least 25 percent of their open enrollment or CEC pupils from the unorganized territory and are willing to accept the unorganized territory, c) prepare a ballot question that includes the proposed boundaries for each willing adjacent district, and d) prepare a pamphlet for each household that includes the full cash value, the assessed valuation, and the estimated amount of primary and secondary property taxes for residential and commercial properties for each ballot option. If there is only one school district that meets the criteria, the county school superintendent may change the boundaries of the school district to include the unorganized territory without conducting an election.

A.R.S. § 15-460 allows a school district governing board, or a petition by at least 10 percent of the qualified electors residing in a school district, to propose changing the boundaries of the school district to include adjacent unorganized territories. The county school superintendent must submit the question of including the unorganized territory in the school district's boundaries at an election. The majority of voters in both the existing school district and the unorganized territory must approve the boundary adjustment in order for it to take effect.

**Provisions**

- Removes the requirement for an unorganized territory to join only a unified school district if they have reached the 150 CEC threshold.
- Requires an unorganized territory to join both a common school district and a union high school district if the adjacent school district is a common school district that is *within* the boundaries of a union high school district.
- Stipulates that high school pupils who reside in an unorganized territory that joins with an adjacent common school district that is *not within* the boundaries of a high school district must be educated in the same manner as the high school pupils who reside in the common school district.
- Contains an emergency clause.
- Makes technical and conforming changes.



# HOUSE OF REPRESENTATIVES

## SB 1218

education database; pupil privacy

Sponsor: Senator Johnson

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**DP** Committee on Education (K-12)

**X** Caucus and COW

House Engrossed

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SB 1218 requires the Arizona Department of Education (ADE) to comply with specific security measures consistent with the Family Educational and Privacy Rights Act (FERPA) when maintaining an education database.

### **History**

FERPA is a federal law that protects the privacy of student education. Though there are certain exceptions, FERPA prohibits schools from releasing student record information without consent of the parent or the student if they have reached the age of 18 or attend a school beyond the high school level. Schools are permitted to release "directory" information, such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance, without permission. However, schools must disclose their intent to release such information and allow a reasonable amount of time for a person to request that the school not disclose it. Additionally, FERPA grants special rights to parents and students concerning education records. These rights include the ability to inspect and review educational records maintained by a school, request certain records believed to be misleading or inaccurate be corrected, and require permission from the parent or eligible student to release information. Schools are required to annually notify parents and students of their rights under FERPA.

Arizona Revised Statutes (A.R.S.) § 15-1042 outlines the Student Accountability Information System (SAIS). SAIS stores all data elements that are compiled and submitted to ADE on each student in Arizona. This data collection is required to comply with statutory requirements assigned to ADE and the State Board of Education (SBE) concerning the calculation of funding for education and determining the academic progress of students. Data elements stored in SAIS include a student's identifier, name, date and place of birth, gender and ethnicity, attendance record, absences, school membership, and special needs information.

Additionally, the statute stipulates that all student-level data required to be submitted to SAIS is not considered public record and must include a statutory reference to the law that necessitates its collection. Data collection cannot be used to adjust funding levels or calculate average daily membership for the purposes of funding except on the 40<sup>th</sup>, 100<sup>th</sup>, and 200<sup>th</sup> day of the school year. A school district or charter school is not required to submit data to ADE more than once every 20 school days. Additionally, ADE is required to adopt guidelines for the removal of obsolete data from SAIS.

In FY 2005-06, ADE was appropriated \$532,800 for the planning and preliminary design of an Agency Information Factory (AIF). The AIF was proposed with the intent to improve access to data on Arizona public schools, including data on enrollment, student demographics, student achievement, teachers, and curriculum. Historically, such information was stored in separate databases and could not be centrally queried. As a result, ADE developed the Education Data Warehouse (AEDW). ADE was appropriated an additional \$2.5M in FY 2006-07 to begin operating AEDW. Under an appropriation footnote, ADE was prohibited from using the monies to hire staff or expand data collection. ADE also received a three-year, \$6M federal grant to fund AEDW. Phase I of AEDW, which was operational beginning February 14, 2008, is the foundation for ADE's web-based school report card system (SRC). According to ADE, the AEDW completed extensive data cleansing and transport processes necessary to unify the data and support the SRC. Phases II and III will add teacher and course level data to AEDW.

**Provisions**

- Mandates ADE to comply with FERPA when collecting, maintaining, or disclosing any information in an education database.
- Stipulates that ADE must maintain an education database of pupil records according to the following guidelines:
  - Use of information in the database is limited to complying with statutory obligations.
  - Personally identifiable information in the database is confidential and not public record.
  - Proper security measures must be employed to guarantee the integrity and confidentiality of the database and prevent identity theft and security breaches.
- Requires a pupil's identifier to be unique and not recognizable by anyone who is not an official maintaining the database.
- Prohibits the unique pupil identifier in the database from being a pupil's social security number or other variation of the pupil's social security number.



# HOUSE OF REPRESENTATIVES

SB 1229

diabetes treatment; schools

Sponsor: Senator Allen

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**DP** Committee on Education (K-12)

**DP** Committee on Health

**X** Caucus and COW

House Engrossed

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SB 1229 allows a school district governing board or a charter school governing body to adopt policies and procedures outlining the process for pupils diagnosed with diabetes to manage their diabetes in the classroom, on school grounds and at school-sponsored activities.

## **History**

Diabetes is a disease in which the body does not produce or properly use insulin, a hormone needed to convert food into energy. There are different kinds of diabetes: type 1, type 2, gestational (pregnancy-related), and other types that result from specific genetic syndromes or other factors. Type 1 diabetes results from the body's failure to produce insulin and accounts for approximately 5 to 10 percent of all diagnosed diabetes cases. Type 2 diabetes results from the body's failure to properly produce and use insulin and accounts for approximately 90 to 95 percent of all diagnosed diabetes cases. People with diabetes use a combination of insulin injections or other medications, blood glucose checks, meal planning, and exercise to maintain their health.

Children with diabetes are currently protected from discrimination by schools under Section 504 of the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act (IDEA) of 1991 (originally the Education for All Handicapped Children Act of 1975), and the Americans with Disabilities Act. Under these laws, schools are required to reasonably accommodate the special needs of children with diabetes. A parent may request a Section 504 Plan to address the needs of a child with diabetes and provide for their medical care at school. If a child with diabetes requires additional educational or rehabilitative services, they may be entitled to an Individualized Education Plan (IEP) in order to receive such services. In either case, the required accommodations must be provided within the child's usual school setting with as little disruption as possible to the normal routine of the child and school while allowing the child to fully participate in all school activities.

## **Provisions**

*For the purposes of this summary, a licensed health professional, as referred to in the bill, includes a doctor of medicine licensed by the Arizona Medical Board, a doctor of naturopathic medicine licensed by the Naturopathic Physicians Board of Medical Examiners, a nurse practitioner licensed by the Board of Nursing, a doctor of osteopathic medicine licensed by the Board of Osteopathic Examiners in Medicine and Surgery, and a physicians assistant licensed by the Arizona Regulatory Board of Physicians Assistants.*

- Allows a school district governing board or a charter school governing body to adopt policies and procedures for pupils who have been diagnosed with diabetes by a licensed health professional, to manage their diabetes in the classroom, on school grounds, and at school-sponsored activities.
- States that the employees of a school district or charter school and the members of a school district governing board or charter school governing body are immune from civil liability with respect to the actions taken to adopt policies and procedures pursuant to this act. Additionally, they are immune from liability for all actions taken based on good faith compliance with policies and procedures adopted pursuant to this act.
- Stipulates that a school district governing board or charter school governing body must include the following components when adopting policies and procedures regarding pupil diabetes management:
  - Requires parents to annually submit a Diabetes Medical Management Plan (DMMP), signed by a licensed health care professional, that:
    - Lists the medications, monitoring equipment, and nutritional needs for the pupil to self-administer and that have been appropriately prescribed or authorized.
    - Authorizes the pupil to carry appropriate medications and monitoring equipment.
    - Acknowledges that the pupil is capable of self-administration of those medications and equipment.
    - States that the pupil is capable of self-monitoring blood glucose.
  - Provides that a pupil is able to practice proper safety precautions for the handling and disposal of the medication and equipment they are authorized to carry and self-administer pursuant with this act. The DMMP must specify a method to dispose of medications and equipment in a manner agreed upon by the parent or guardian and the school.
  - Outlines procedures that allow a school district or charter school to withdraw a pupil's authorization to self-monitor blood glucose and self-administer diabetes medication if the pupil does not practice proper safety precautions according to their DMMP.
- Allows a school district governing board or a charter school governing body to adopt policies and procedures to designate two or more school employees, as approved by the parent, to serve as Voluntary Diabetes Care Assistants (Assistants).
- Stipulates that Assistants are allowed to administer glucagon to a pupil in an emergency situation if all of the following conditions exist:
  - A school nurse or licensed health professional is not immediately available to attend to the pupil.
  - The parent or guardian has provided the school with an unexpired glucagon kit that has been prescribed for the pupil by a licensed health professional.
  - The Assistants have provided a written statement to the school that has been signed by a licensed health professional and states that they have received proper training in glucagon administration. The training is required to include the following:
    - An overview of all types of diabetes.
    - Symptoms and treatment of hypoglycemia.
    - Techniques for recognizing the symptoms requiring glucagon administration.
- Prohibits a school district or charter school employee from being subjected to any penalty or disciplinary action for refusing to serve as an Assistant.
- States that a school district, charter school, employees of a school district and charter school, and volunteer licensed health professionals who train Assistants are immune from civil liability for the consequences of the good faith adoption and implementation of the policies and procedures adopted pursuant with this act.



# HOUSE OF REPRESENTATIVES

## SB 1185

credit report; score; security freeze

Sponsors: Senators Aguirre, Aboud, Arzberger, et al

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**DP** Committee on Financial Institutions and Insurance

**X** Caucus and COW

House Engrossed

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SB 1185 establishes procedures and requirements for a consumer to request and a credit reporting agency to place or lift a security freeze on the consumer's credit report.

### **History**

A consumer credit report is the record of an individual's credit history, including credit card accounts, revolving credit accounts, borrowing and payment history, credit inquiries and credit limits. Additional information typically contained in the report consists of past and present residences of the consumer, whether the consumer has been sued or arrested and any bankruptcy filings. Companies that gather and sell this information are called consumer reporting agencies (CRA); the three main agencies are Equifax, Experian and Trans Union.

A security freeze restricts a consumer reporting agency from releasing a credit report or any information from the report without authorization from the consumer. A freeze also requires authorization to change information—such as the consumer's name, date of birth, Social Security number and address—in a consumer report. A security freeze lasts until the consumer removes it. A person can temporarily remove the freeze to open a new credit account or a new loan. To do this, a consumer must give the consumer reporting agency a special personal identifying number (PIN), which is required to verify the consumer's identity. States have created exemptions for specified organizations that still can access credit report information even if a freeze is in place. These organizations include law enforcement agencies, child support enforcement, insurance, and subsidiaries and affiliates of companies that have existing accounts with the consumer.

Equifax, Experian and TransUnion's allow Arizona residents to request a security freeze for free if the person has been a victim of identity theft. If the person is not a victim of identity theft the fee for placing a security freeze on the credit report is \$10.

According to the National Conference of State Legislatures, 40 states have enacted security freeze laws. Of the states that have security freeze laws, Arkansas, Kansas, Mississippi and South Dakota only allow victims of identity theft to place security freezes on their information. Most states allow the consumer reporting agencies to charge a fee that ranges from \$5 to \$20. Utah does not specify the exact amount of a fee but allows a "reasonable fee". South Dakota law does not contain a fee provision. Six states prohibit the charging of fees to senior citizens and most states prohibit a fee when the person requesting the security freeze has been a victim of identity theft.

**Provisions**

***Requesting a Security Freeze***

- Allows a consumer to request that a CRA place a security freeze on the consumer's credit report and prohibits a CRA from releasing a consumer's credit report or score that has been frozen to a third party without the consumer's prior authorization. However, a CRA may advise a third party that a security freeze is in effect.
- Requires a CRA to place a security freeze on a consumer's credit report or credit score within ten business days of receiving a written request from the consumer.
- Requires a CRA to send a written confirmation of the security freeze to the consumer within ten business days after placing the freeze that contains a unique personal identification number (PIN) or password, other than the consumer's social security number, that the consumer can use to gain access to the frozen report.
- Allows a third party to treat an application for credit or any other purpose as incomplete if the third party requests access to a credit report that is frozen.

***Removing and Temporarily Lifting a Freeze***

- Requires a security freeze to remain in effect until the consumer requests that the security freeze be removed or temporarily lifted unless the freeze was due to a material misrepresentation of fact and the CRA notifies the consumer before removing the freeze.
- Allows a consumer to request by mail, telephone, Internet or other electronic contact method, in a form acceptable to the CRA, that a security freeze be removed or temporarily lifted.
- Requires a consumer to provide proper identification and the PIN or password to remove a security freeze.
- Requires, to temporarily lift a security freeze, the consumer to provide to the CRA proper identification, the PIN or password and the proper information regarding the time period the report will be available to users.
- Requires a CRA to remove or temporarily lift a security freeze within:
  - three business days after receiving a consumer's request by mail.
  - 15 minutes after receiving the consumer's request by telephone, Internet or other electronic contact method in a form acceptable to the CRA, during normal business hours.
- Stipulates that a CRA is not required to remove or lift the freeze within 15 minutes if its ability is prevented by:
  - an act of God.
  - unauthorized or illegal acts by a third party.
  - operational interruption.
  - governmental action.
  - regularly scheduled maintenance during nonbusiness hours.

- commercially reasonable maintenance or repair to the CRA's systems that is unexpected or unscheduled.
  - receipt of a request outside normal business hours.
- Requires the CRA, when a consumer requests a freeze, to disclose the process for placing, removing and temporarily lifting a freeze.
- Allows a CRA to charge a five dollar fee: a) for each security freeze, removal of the freeze and temporary lift of the freeze, unless the consumer is a victim of identity theft and submits a valid police report; or b) if the consumer does not retain the original PIN or password and the CRA must reissue or provide a new PIN or password.
- Prohibits a CRA, if a security freeze is in place, from changing a consumer's name, date of birth, social security number or address in the consumer's credit report without sending a written confirmation of the change within 30 days after the change is posted. Notices of address changes must be sent to both the new and former address.
- Allows a CRA to make technical modifications of information in a frozen credit report without written confirmation.
- Specifies that the following groups may continue to access a credit report or score, even if frozen:
  - any person or agent of that person in conjunction with the proposed purchase of a financial obligation with which the consumer has or had, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owed for the account, contract or negotiable instrument.
  - a subsidiary, affiliate, agent, assignee or prospective assignee of a person to whom access has been granted for the purpose of facilitating the extension of credit or other permissible use.
  - any state or local agency, law enforcement agency, trial court or private collection agency acting pursuant to a court order, warrant or subpoena.
  - a child support agency acting in accordance with a program for child support obligations.
  - the Department of Health Services or its agents or assigns acting to investigate fraud.
  - the Department of Revenue or its agents or assigns acting to investigate or collect on delinquent taxes, unpaid court orders or any other statutory responsibilities.
  - the Department of Transportation or its agents or assigns acting to investigate or collect on delinquent taxes, unpaid court orders or any other statutory responsibilities.
  - the Administrative Office of the Courts to conduct audits, investigate fraud or for applicant screening.
  - any agency or entity for the purposes of prescreening under the Federal Fair Credit Reporting Act of 1970.
  - any person or entity that administers a credit file monitoring subscription service to which the consumer is subscribed.
  - any person or entity for the purpose of providing a consumer with a copy of the consumer's credit report or credit score on the consumer's request.
  - a person setting or adjusting a rate or claim or underwriting for insurance purposes, except as otherwise provided by law.

- a CRA's database or file that consists entirely of information concerning, and is used entirely for criminal record information, fraud prevention or detection, tenant screening or employment screening.
  - any state or federally regulated financial institution for checking, savings and investment accounts.
- Stipulates that the following entities are not required to place a security freeze on a credit report:
  - a check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers or similar methods or payments.
  - a deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.
  - a CRA that acts only as a reseller of credit information by assembling and merging information contained in the database of another CRA or multiple CRAs and that does not maintain a permanent database of credit information from which new credit reports or credit scores are produced.

#### *Enforcement and Liability*

- Classifies a violation of a security freeze requirement as consumer fraud, subject to enforcement through private action and the Attorney General through injunctive relief.
- Exempts a CRA or other information source that reports inaccurate information corrected in compliance with the laws regulating security freezes or that fails to lift a security freeze within the required time period from being liable to the consumer.
- Provides for liability on the part of a CRA, if the CRA is grossly negligent or acts willfully and maliciously with intent to harm a consumer by failing to implement a security freeze or releasing a credit report or credit score when a freeze has been placed by the consumer.

#### *Miscellaneous*

- Defines "security freeze" and "proper identification."
- Becomes effective on August 31, 2008, or the general effective date, whichever is earlier.



# HOUSE OF REPRESENTATIVES

SB 1091

Arizona medical board  
Sponsor: Senator Allen

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**DPA** Committee on Health

**X** Caucus and COW

House Engrossed

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SB 1091 requires medical licensure applicants to complete a training unit on the Arizona Medical Board's (Board) statutes and rules and exempts from civil liability persons who in good faith examine physicians pursuant to Board investigations.

## **History**

The Board licenses, regulates, and conducts examinations of medical doctors. The Board currently has 19,337 licensees and in 2007 the board received and investigated approximately 1,400 complaints. The Board is comprised of eight licensed physicians and four public members.

According to Arizona Revised Statutes (A.R.S.) § 32-1422, all applicants for licensure to practice medicine must complete certain requirements including the following:

- Graduate from an approved school of medicine.
- Complete an approved twelve month hospital internship, residency, or clinical fellowship.
- Hold a professional record free of any acts that constitute grounds for disciplinary action.
- Not have had a license to practice revoked by a medical regulatory board in another jurisdiction.
- Not be currently under investigation, suspension, or restriction by a medical regulatory board in another jurisdiction.
- Not have surrendered a license to practice medicine in lieu of disciplinary action by a medical regulatory board in another jurisdiction.

A.R.S. § 32-1451 allows the Board to investigate any evidence that appears to show that a doctor of medicine may be medically incompetent, guilty of unprofessional conduct, or mentally or physically unable to safely engage in the practice of medicine. The Board may require any combination of mental, physical, oral, or written medical competency examinations and conduct necessary investigations to fully inform the Board regarding complaints filed against a doctor.

## **Provisions**

- Requires medical licensure applicants to complete a training unit on the Board's statutes and rules, and attach to the application form documentation of having completed the training unit.
- Specifies that license renewal applicants must attach documentation of having completed a training unit on the Board's statutes and rules to the renewal application form.

## **SB 1091**

- Exempts from civil liability persons, facilities, or programs who in good faith conduct assessments, examinations, or investigations of physicians pursuant to Board investigations.

### **Amendments**

#### **Health:**

- Clarifies that an applicant is required to submit proof with the renewal application of having completed the training unit.



# HOUSE OF REPRESENTATIVES

SB 1236

homeopathic board; omnibus

Sponsors: Senator O'Halleran: Representative Stump

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**DP** Committee on Health

**X** Caucus and COW

House Engrossed

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SB 1236 makes a variety of changes to the Board of Homeopathic Medical Examiners' (Board) statutes including changing the definitions of minor surgery and unprofessional conduct, exempting certain persons from the Board's regulation, eliminating the Board's ability to waive examination requirements, and adding requirements regarding maintenance of patients' records.

## **History**

The Board was created by Laws 1980, Chapter 249, § 21. Arizona Revised Statutes (A.R.S.) § 32-2901 defines homeopathy as a system of medicine that employs homeopathic medication in accordance with the principle that a substance that produces symptoms in a healthy person can cure those symptoms in an ill person. Homeopathic medicine includes the following eight therapies: acupuncture, chelation therapy, homeopathy, minor surgery, neuromuscular integration, nutrition, orthomolecular therapy, and pharmaceutical medicine. According to the Board, there are 107 licensed homeopathic physicians in Arizona.

To practice homeopathic medicine in Arizona, a licensee must have an unrestricted osteopathic or medical license in good standing obtained in Arizona or another jurisdiction. A.R.S. § 32-2915 requires licensees to renew their licenses on or before January 1 of each year by submitting a completed renewal form accompanied by a renewal fee. A licensee who fails to complete their renewal application by February 1 is required to also submit a late renewal fee. With each application for licensure renewal, the licensee must include a report of disciplinary actions, restrictions, and any other actions placed on or against the licensee by any other jurisdiction.

A.R.S. § 32-2913 requires an applicant for licensure to practice homeopathic medicine to pass an examination prescribed by the Board. Arizona Administrative Code states that the examination consists of three parts: a timed written examination with a passing grade of 70%, an oral examination on one or more of the treatment modalities, and a personal interview with the Board to examine the applicant's personal and professional history as it applies to homeopathic medicine. The board may waive the examination requirement only if the applicant has primarily practiced homeopathic medicine for the past three years and submits affidavits from three physicians who hold valid medical degrees that attest to the applicant's competency for homeopathic practice, or the applicant holds a current, unsuspended, and unrevoked license to practice homeopathic medicine issued by another jurisdiction.

**Provisions**

- Changes the name of the Board to Board of Homeopathic and Integrated Medical Examiners.
- Deletes an uncomplicated vasectomy from the procedures included in the definition of minor surgery.
- Eliminates the ability for the Board to prescribe procedures that may be considered minor surgery.
- Removes the authority for the Board to accredit educational institutions in Arizona which grant the degree of doctor of medicine in homeopathy.
- Exempts from regulation the practice of providing treatment of the spiritual vital force in accordance with Hahnemanian principles through the use of remedies that are diluted beyond the concentration of substances in drinking water and prepared in the manner described in the homeopathic pharmacopoeia of the United States.
- Eliminates the Board's authority to waive the licensure examination requirement.
- Removes the fifty dollar capped fee requirement for triennial re-registration of supervision of a homeopathic medical assistant.
- Makes technical and conforming changes.

**Licensure Qualifications**

- Allows an applicant for licensure to attempt to demonstrate to the Board's satisfaction that the applicant is completely rehabilitated with respect to conduct that was the basis for a revocation or surrender of a license in another jurisdiction.
- Requires the Board to vacate its previous order to deny a license if that denial was based on the applicant's conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal.
  - Allows an applicant for licensure to resubmit an application as soon as the court enters the reversal.
- Prohibits a person from submitting an application for reinstatement or a new application within five years after the person has completely corrected the conduct and made full legal restitution to the Board's satisfaction.

**Licensure Renewal**

- Requires the Executive Director, beginning January 1, 2009, to notify the licensee of the renewal date and provide the renewal form at least thirty days before the first day of the month in which a physician's license was initially issued.
  - Stipulates the Executive Director must send this notice by first class mail to the address the licensee most recently provided to the Board.
- Stipulates that the Board must refrain from renewing a license if the licensee does not document compliance with completing continuing education requirements.
  - Specifies the Board may waive the continuing education requirements for a period prescribed by the Board if the licensee's noncompliance was due to disability, military service, absence from the United States, or circumstances beyond the control of the licensee.
  - Allows the Board to grant an extension of not more than sixty days to a licensee who fails to complete the continuing education requirements for any other reason.

- Requires a licensee, beginning January 1, 2010, to include with the renewal form a statement that the licensee has completed at least twenty hours of Board approved continuing education in the preceding year.
- Requires a licensee, beginning January 1, 2009, to submit a completed license renewal application and the renewal fee each year on or before the last day of the month in which the license was initially issued.
  - Stipulates that a licensee who fails to do this by the first day of the following month must also submit a late fee as prescribed by the Board.
- Clarifies that a license expires if it is not renewed within 60 days.
- Specifies that a person who practices homeopathic medicine after a license has expired is in violation of the Board's statutes.
- Requires the Executive Director to prorate the annual license renewal fee for each licensee by dividing the annual amount by twelve and multiplying the result by the number of months remaining between January 1, 2009 and the renewal month.
  - Stipulates the prorating of fees must occur in the first year of the change to a licensure renewal date that is based on the month in which the Board initially issued a physician's license.

#### **Unprofessional Conduct**

- Classifies as an act of unprofessional conduct a failure to comply with the continuing education requirements without the use of a waiver.
- Specifies that it is an act of unprofessional conduct to prescribe, dispense, or furnish a prescription medication or prescription-only device to a person unless the licensee first conducts a comprehensive physical or mental health status examination of that person or has previously established a doctor-patient relationship, with the following exceptions:
  - A physician who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional.
  - Emergency medical situations.
  - Prescriptions written to prepare a patient for a medical examination.
  - Prescriptions written or prescription medications issued for use by a county or tribal public health department for immunization programs, an emergency treatment, in response to an infectious disease investigation, a public health emergency, an infectious disease outbreak or an act of bioterrorism.
- Establishes as an act of unprofessional conduct a failure to obtain from a patient before an examination or treatment signed informed consent that includes language that makes it clear the physician is providing homeopathic medical treatment instead of or in addition to standard conventional allopathic or osteopathic treatment.

#### **Patient Medical Records**

- Stipulates that a licensee must keep a patient's medical records as follows:
  - For at least seven years after the last date the licensee provided the patient with medical or health care services if the patient is an adult.
  - Either for at least three years after the patient's eighteenth birthday or for at least seven years after the last date the licensee provided that patient with medical or health care services, whichever date occurs first, if the patient is a child.
  - If the patient dies before the expiration of the dates prescribed either for an adult or a child, for at least three years after the patient's death.



# HOUSE OF REPRESENTATIVES

SB 1329

AHCCCS; self-directed care services

Sponsors: Senators Allen, Aboud

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**DP** Committee on Health

**X** Caucus and COW

House Engrossed

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SB 1329 allows members of the Arizona Long-Term Care System (ALTCS) to employ persons to provide self-directed attendant care services if they meet certain requirements.

## History

The Arizona Health Care Cost Containment System (AHCCCS) is Arizona's Medicaid agency, and is responsible for the administration of the ALTCS. The ALTCS program is for aged, blind, or disabled persons who need ongoing services at a nursing facility level of care, and meet income and other eligibility requirements. Arizona Revised Statutes § 36-2939 requires the provision of home and community based services (HCBS) in an ALTCS member's home or alternative residential setting. HCBS may include the following:

- Home health, which means the provision of nursing services.
- Home health aide, which means a service that provides intermittent health maintenance or monitoring of a health condition.
- Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance.
- Personal care, which means a service that provides assistance to meet essential physical needs.
- Habilitation, which means the provision of physical, speech, or other therapies.

## Provisions

- Allows members of ALTCS to employ a person to provide self-directed attendant care services that would otherwise be considered within the scope of nursing care if the following conditions are met:
  - The person receiving the services is in stable condition, is not a resident in a medical facility, and is competent to give directions to the attendant.
  - The person receiving the services has a functional disability and requires a service that could have been performed by that person except for the disability.
  - The attendant offers only services permitted by the AHCCCS by rule.
- Requires the AHCCCS to adopt rules approved by the Board of Nursing prescribing the types of self-directed attendant care services that may be delivered.
- Requires the AHCCCS to submit a report by January 1, 2011 to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the Board of Nursing that includes the following information:
  - The number of ALTCS members using self-directed attendant care services.

**SB 1329**

- The types of services used.
- Any incidents of hospitalization associated with persons using self-directed attendant care services.
- Defines self-directed attendant care.



# HOUSE OF REPRESENTATIVES

SB 1012

postsecondary education programs; PEG; PFAP

Sponsor: Senator Gray L

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**DPA** Committee on Higher Education

**X** Caucus and COW

House Engrossed

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SB 1012 allows the Arizona Commission for Postsecondary Education (ACPE) to extend for good cause shown, the time that a student must complete a baccalaureate degree under either the Private Postsecondary Education Student Financial Assistance Program (PFAP) or the Private Postsecondary Education Grant Program (PEG).

## History

Arizona Revised Statutes (A.R.S.) Section 15-1854 provides that a student who has received an associate's degree from a community college district or a community college under the jurisdiction of an Indian tribe in this state to apply for participation in the PFAP. The student must register full-time in a baccalaureate program at a private, nationally or regionally accredited four year degree granting college or university in Arizona. The ACPE must establish criteria for the PFAP which includes financial need and academic merit. The participating student must receive an award in an amount up to \$2,000 annually for up to two years for tuition and fees. A student who fails to receive a baccalaureate degree within 3 years of receiving an award must reimburse the PFAP fund for all awards received under the PFAP.

A.R.S. Section 15-1855 establishes the ACPE as the administrator of the PEG that allows participating full-time students at a private postsecondary institution to receive an annual grant of \$2,000 for a maximum of four calendar years. The grant is to be used to pay for all or a portion of the tuition, cost of required books and the fees charged at a qualifying school. The amount of a grant awarded to a participating part-time student shall be prorated. Employees of private postsecondary institutions and their family members are not eligible to receive a grant under PEG if the employee or family member is eligible for tuition reimbursement as a benefit of employment. If a student does not receive a baccalaureate degree within a five year period the student must reimburse the grant for all awards received. Furthermore, if the participating student is no longer in good academic standing, the grant must be immediately discontinued and the student is required to reimburse the grant for any unused portions.

## Provisions

- Allows the ACPE to provide extensions for the requirement of obtaining a baccalaureate degree within three years for the PFAP and five years for the PEG for good cause shown on receipt of supporting documentation from the student.
- Stipulates that a PEG grant awarded to a part-time student requires the student to be enrolled in six credit hours per semester or at least six credit hours for one-half of an academic year.

## **SB 1012**

- Provides that a student who has a baccalaureate degree from any postsecondary institution is not eligible for the PEG.
- Changes the eligibility requirement for the PEG to require a student to be either:
  - A current resident of Arizona and resided in Arizona for at least the past twelve months.
  - A member of the United States Military, a spouse or dependent of a member stationed in Arizona.
- Requires a student who is eligible to apply for and receive monies from the PFAP fund before the student is eligible to apply for a grant from the PEG fund.

### **Amendments**

#### **Higher Education**

- Clarifies that under the PFAP program a student is entitled to \$2,000 annually not to exceed 2 years *or* \$4,000.
- Amends the definition of a part-time student as one enrolled in at least half-time for the academic year as defined in 20 U.S.C. Section 1088.



# HOUSE OF REPRESENTATIVES

SB 1049

safe haven providers; notices

Sponsors: Senators Gray L, Blendu, Landrum Taylor

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**DP** Committee on Human Services

**X** Caucus and COW

House Engrossed

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SB 1049 instructs designated safe haven locations to post identifying notices outside every entrance.

## **History**

Current statute (A.R.S. §13-3623.01) allows a parent or agent of a parent to surrender a baby who is seventy-two hours or younger to a safe haven provider. The parent may remain anonymous and is not required to answer any questions. On-duty firefighters, emergency medical technicians and staff members at a hospital, outpatient treatment center, church, licensed adoption agency or licensed child welfare agency are able to receive infants under the law. Safe haven providers are required to offer written information regarding information and referral services and to notify Child Protective Services as soon as possible. Safe haven providers are not liable for anything that may happen to the infant while in their custody if the provider acts in good faith and there is not evidence of gross negligence.

In 1999, Texas became the first state to pass safe haven legislation. To date, forty-six states have enacted similar legislation ([www.childwelfare.gov](http://www.childwelfare.gov)). Arizona's safe haven laws went into effect in 2001. To date, fourteen infants have been delivered to safe haven providers in Arizona ([www.azdes.gov](http://www.azdes.gov)).

## **Provisions**

- Requires fire stations, hospitals and outpatient treatment centers to post a safe haven notice at all entrances.
- Mandates the notice must be placed in a conspicuous area on the exterior of the building.
- Details that the font used on the notices must be bold faced capital letters and at least two inches in height.
- Allows the fire station, hospital or outpatient treatment center to display an identifying logo on the notice.
- Stipulates that a safe haven provider which does not post a notice is not subject to civil liability.
- Makes technical changes.



# HOUSE OF REPRESENTATIVES

SB 1112

divorce; disposition of property

Sponsor: Senator Gray L

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**DP** Committee on Human Services

**DP** Committee on Judiciary

**X** Caucus and COW

House Engrossed

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SB 1112 allows the court to consider debts and obligations that occur when community property is divided and requires the court to enter findings of fact if any part of the division is in the nature of support.

## **History**

Arizona law considers property that is acquired after marriage as *community property*, with each spouse holding an undivided half interest. If the parties in a marriage dissolution or legal separation proceeding are unable to divide the property, the Superior Court (Court) in the county where the petition for dissolution or legal separation is filed determines the division.

Current statute provides that certain properties are exempt from process for collection of debt. Arizona's homestead exemption protects up to \$150,000 of fixed equity in an individual's dwelling from attachment, execution and forced sale. The exemption applies to a person's house and land, condominium or cooperative or mobile home and land, as well as the cash proceeds from the sale of the dwelling for up to eighteen months after the date of sale (A.R.S. §33-1101). Specified values of personal property and other benefits are also exempt from process. These items and benefits include furniture, appliances, clothing, inheritance, assets invested in qualifying Individual Retirement Accounts and benefits from health, accident and life insurance.

The obligation to pay child support is a primary duty and an individual may not be discharged from his or her liability to pay if bankruptcy is filed (A.R.S. §25-501).

## **Provisions**

- Permits the Court, when dividing property in a marriage dissolution or legal separation proceeding, to consider all debts and obligations related to the property, including accrued or accruing taxes, that would become due on the receipt, sale or other disposition of the property.
- Allows the Court to consider the exempt status of certain properties from process for collection of debt.

**SB 1112**

- Requires the Court to make specific findings of fact and supporting conclusions of law in its decree if any part of the Court's division of joint, common or community property is in the nature of child support or spousal maintenance.
- Makes technical and conforming changes.



# HOUSE OF REPRESENTATIVES

SB 1053

elections; observation; counting center

Sponsors: Senators Gray C, Blendu

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**DPA** Committee on Judiciary

**X** Caucus and COW

House Engrossed

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SB 1053 adds representatives for a candidate for nonpartisan office and for a political committee that supports or opposes a ballot measure to the list of persons required to observe the proceedings at ballot counting centers.

## History

According to both currently enacted versions of A.R.S. § 16-621, the county boards of supervisors or other officers in charge of elections are responsible for directing all the proceedings at ballot counting centers. These proceedings must be conducted in accordance with the official instructions and procedures manual that is issued by the Secretary of State pursuant to A.R.S. § 16-452. Additionally, the proceedings must take place under the observation of representatives of each political party and the public, but only persons who are authorized for the purpose may touch any ballot, ballot card or return.

For all statewide, county or legislative elections, live video recordings of the custody of the ballots in counting centers are made available for public viewing on the Secretary of State's website.

## Provisions

- Adds the following persons to list of persons who must observe the proceedings at ballot counting centers:
  - A representative of a candidate for nonpartisan office; and
  - A representative of a political committee in support of or in opposition to a ballot measure, proposition or question.
- Limits number of representatives for a candidate for nonpartisan office or for a political committee in support of or in opposition to a ballot measure to no more than a total of three persons.
- Specifies that officer in charge of elections must develop a procedure for determining the three-person limit.
- Repeals A.R.S. § 16-621, as amended by Laws 2007, Ch. 259, § 1, relating live video recording of ballot counting centers.
- Makes technical corrections.

**Amendment**

**Judiciary**

- Specifies that the county officer in charge of elections must do the following:
  1. Conduct a drawing by lot in order to select up to three persons representing a candidate for nonpartisan office or representing a political committee that supports or opposes a ballot measure to observe the proceedings at the ballot counting center;
  2. Notify the selected candidates or groups; and
  3. Allow the selected candidates or groups to observe the proceedings at the counting center.
- Stipulates that candidates or political committees must notify the officer in charge of elections no later than 10 days before the election in order to be entered into the drawing.
- Specifies that the drawing by lot must occur after the deadline to receive submissions but prior to 7 days before the election.
- Allows a group that is selected to change their representative for different days of observation.
- Prohibits a group from sending more than one observer on any given observation day.
- Makes technical and conforming changes.



# HOUSE OF REPRESENTATIVES

SB 1055

civil rights advisory board; continuation

Sponsor: Senator Gray C

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**DP** Committee on Judiciary

**X** Caucus and COW

House Engrossed

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SB 1055 extends the operations of the Arizona Civil Rights Advisory Board for 10 years.

## **History**

The Civil Rights Division (Division) of the Arizona Department of Law was established in 1965. According to A.R.S. § 41-1402 (B), the Division is responsible for administering Arizona's civil rights statute (A.R.S. Title 41, Chapter 9) and for reporting its activities and recommendations to the Legislature and the Governor at least once a year.

According to the 2007 Annual Report issued by the Attorney General, the Division investigated 1,314 discrimination charges in fiscal year 2007 and resolved 871 cases. The Division also mediated 114 civil rights cases and reached mediation agreements in 49 cases (yielding a total of \$210,678 in relief).

A.R.S. § 41-1401 created the Arizona Civil Rights Advisory Board (ACRAB) within the Division. The ACRAB is composed of seven members, not more than four of whom may belong to the same political party. The members are appointed to three year terms by the Governor and receive compensation of no more than \$1,000 per fiscal year.

Under state law, each new and existing agency has no more than a ten-year duration, at the end of which the agency is subject to a sunset review (A.R.S. § 41-2955). Current law states that the ACRAB terminates July 1, 2008 (A.R.S. § 41-3008.11).

At the sunset review of ACRAB, which was conducted in 2007, the Senate and House Judiciary Committee of Reference recommended that the ACRAB continue for 10 years.

## **Provisions**

- Extends the operations of the ACRAB until July 1, 2018.
- Continues the Division until January 1, 2019.
- Contains legislative intent.
- Applies retroactively to July 1, 2008.



# HOUSE OF REPRESENTATIVES

SB 1059

elections; counting center video; multiple

Sponsor: Senator Harper

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**DP** Committee on Judiciary

**X** Caucus and COW

House Engrossed

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SB 1059 repeals A.R.S. § 16-621, as amended by Laws 2007, Ch. 259, § 1, relating to live video recordings of the proceedings at ballot counting centers.

## History

A.R.S. § 16- 602 provides that a hand count be conducted at the central counting center from at least two percent of the county precincts or two precincts, whichever is greater. Only ballots cast at the polling places and ballots from direct recording electronic machines are counted. Provisional ballots, conditional provisional ballots and write-in votes are not included in the hand count. One or more batches of early ballots are selected by the election officer for a post-election manual audit, randomly selecting a number equal to one percent of the total number of early ballots. The county chairman of each represented political party designates and provides the election board members to perform the hand count under the supervision of the county officer in charge of elections.

A.R.S. § 16-621 requires that persons who process and count ballots be deputized in writing and take an oath that they will faithfully perform their duties. There must not be any preferential counting of ballots for the purpose of projecting the outcome of an election.

During the 48<sup>th</sup> Legislature, First Regular Session, two conflicting versions of A.R.S. § 16-621 were passed and signed into law.

Laws 2007, Ch. 259, § 1 required, for any statewide, county or legislative election, the officer in charge of election to provide a live video recording of the custody of all the ballots that are located in the counting center from the time that the ballots are received for counting until all of the ballots are tabulated. The live video recording was required to be linked to the Secretary of State's website and was to be posted for viewing by the public. The officer in charge of elections was required to record the video coverage and to retain the recordings as public record.

## Provisions

- Repeals A.R.S. § 16-621, as amended by Laws 2007, Ch. 259, § 1, relating to live video recordings of the proceedings at ballot counting centers.



# HOUSE OF REPRESENTATIVES

SB 1067

escape; definition

Sponsor: Senator Gray C

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**DP** Committee on Judiciary

**X** Caucus and COW

House Engrossed

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SB 1067 excludes time spent on escape status when calculating if the offense was committed within 10 years for a Class 2 or 3 felony or 5 years for a Class 4, 5, or 6 felony.

## History

A.R.S. § 13-604 (W) (3) includes the following provisions in the definition of *historical prior felony conviction*:

1. Any Class 2 or 3 felony (with several exceptions) that was committed within 10 years immediately preceding the date of the present offense.
2. Any Class 4, 5 or 6 felony (with several exceptions) that was committed within 5 years immediately preceding the date of the present offense.

Any time spent on absconder status while on probation or incarcerated is excluded in calculating whether the offense occurred within the specified time period.

Pursuant to A.R.S. § 13-604 (T), if a person is convicted of committing a felony with the intent to promote, further or assist any criminal conduct by a criminal street gang, the presumptive, minimum and maximum sentence for the offense must be increased by three years.

## Provisions

- Excludes time spent on escape status when calculating if the offense was committed within:
  - 10 years for a Class 2 or 3 felony; or
  - 5 years for a Class 4, 5, or 6 felony.
- Corrects conflicting versions of A.R.S. § 13-604 relating to conviction of criminal street gang activity.
- Repeals a conflicting version of A.R.S. § 13-604, as amended by Laws 2007, Ch. 281, § 1.
- Defines *escape*.
- Makes conforming changes.



# HOUSE OF REPRESENTATIVES

SB 1068

criminal appeals

Sponsor: Senator Gray C

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**DP** Committee on Judiciary

**X** Caucus and COW

House Engrossed

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SB 1068 prohibits defendants from appealing if a defendant's absence prevented sentencing from occurring within 90 days after conviction.

## **History**

A.R.S. § 13-4033 allows an appeal to be taken by the defendant only from the following:

1. A final judgment of conviction or verdict of guilty except insane.
2. An order denying a motion for a new trial or from an order after judgment affecting the substantial rights of the party.
3. A sentence on the grounds that it is illegal or excessive.

Defendants are currently prohibited from appealing a judgment or sentence that is entered pursuant to a plea agreement or an admission to a probation violation in noncapital cases.

## **Provisions**

- Prohibits defendants from appealing the following if a defendant's absence prevented sentencing from occurring within 90 days after conviction and the defendant fails to prove by clear and convincing evidence that the absence was involuntary:
  1. Final judgments of conviction or verdict of guilty except insane; and
  2. An order denying a motion for a new trial.
- Makes technical changes.



# HOUSE OF REPRESENTATIVES

SB 1057

law enforcement officer; definition; representation

Sponsor: Senator Gray, C.

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**DP** Committee on Natural Resources and Public Safety

**X** Caucus and COW

House Engrossed

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\*\*\*Revised\*\*\*

Senate Bill 1057 excludes a detention, correction, probation or surveillance officer who is a probationary employee from provisions relating to interviews that may lead to their dismissal, demotion or suspension or from provisions relating to evidence during an appeal of a disciplinary action.

## History

*Law enforcement officers* and *probation officers* have the right to request representation during an interview that the employer reasonably believes will result in dismissal, demotion or suspension. Before the interview may begin, the employer must inform, in a written notice, the *law enforcement officer* or the *probation officer* of the following information:

- The specific nature of the investigation,
- The officer's status in the investigation,
- All known allegations of misconduct that are the reason for the interview, and
- The officer's right to have a representative present at the interview. (A.R.S. § 38-1101)

A.R.S. § 38-1101 provides procedures for the exchange and dissemination of information in any appeal of a disciplinary action by a *law enforcement officer* or *probation officer* and also defines *law enforcement officer* and *probation officer* as follows:

- *Law enforcement officer* means:
  - An individual, other than a probationary employee, who is certified by the Arizona Peace Officer Standards and Training Board, other than a person employed by a multi-county water conservation district.
  - A detention officer or correction officer who is employed by this state or a political subdivision of this state.
- *Probation officer* means a probation officer or surveillance officer who is employed by this state or a political subdivision of this state.

Laws 2005, Ch. 203, § 3 amended A.R.S. § 38-1101 to include *probation officers*. It also revised the definition of *law enforcement officer* and added the definition of *probation officer*. Previous to these changes, A.R.S. § 38-1101 defined a *law enforcement officer* as an individual, other than a probationary employee, who is certified by the Arizona Peace Officer Standards and Training Board or who is a detention officer or correction officer and who is employed by this state or a political subdivision of this state other than a multi-county water conservation district.

**Provisions**

- Modifies the A.R.S. § 38-1101 definition of a *law enforcement officer* to exclude detention officers or correction officers who are probationary employees.
- Modifies the A.R.S. § 38-1101 definition of a *probation officer* to exclude probation officers or surveillance officers who are probationary employees.



# HOUSE OF REPRESENTATIVES

SB 1108

homeland security advisory councils; membership

Sponsor: Senator Harper

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**DP** Committee on Natural Resources and Public Safety

**X** Caucus and COW

House Engrossed

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Senate Bill 1108 allows a mayor, county sheriff, police chief or county supervisor who is required to serve on a Homeland Security Regional Advisory Council to appoint a designee to serve in their place.

## History

The Arizona Department of Homeland Security is responsible for formulating policies, plans and programs to enhance the ability of the State to respond to acts of terrorism and other hazards. (A.R.S. § 41-4254)

The Department of Homeland Security Coordinating Council (Coordinating Council) consists of 25 members who must meet at least once quarterly. The Coordinating Council provides advice to the Director of the Department of Homeland Security (Director) regarding issues that relate to homeland security and must hold a public hearing for the purpose of:

- Receiving the lists of requests for State homeland security grant program monies that are developed by each Regional Advisory Council.
- Receiving from the Director requests for homeland security grant monies from the federal government.
- Receiving from the Director the amount of appropriations or grants to the State by the federal government for homeland security purposes and the Director's allocation of these monies to the jurisdictions and other organizations eligible to receive the funds.

(A.R.S. § 41-4256)

The five Homeland Security Regional Advisory Councils (Councils) are responsible for:

- Developing, implementing and maintaining regional homeland security strategies.
- Supporting and assisting in the implementation of Arizona's comprehensive risk assessment.
- Supporting and assisting in an integrated regional approach to homeland security in Arizona.
- Establishing baseline prevention and response capabilities through anchor cities consistent with State and regional plans.
- Collaborating with other regional councils and organizations to ensure successful integration of homeland security programs and initiatives.
- Developing a list of requests for State homeland security grant program monies and forward these requests to the Director. Before the request is forwarded, the Councils must present the request to the Coordinating Council.

## **SB 1108**

- Recommending allocation of State homeland security grant program monies to eligible jurisdictions and other organizations based on regional, state and federal criteria.  
(A.R.S. § 41-4258)

Jurisdictions of the Councils are established as follows:

- The North region consists of Coconino, Navajo and Apache counties.
- The East region consists of Graham, Greenlee, Gila and Pinal counties.
- The South region consists of Pima, Santa Cruz, Cochise and Yuma counties.
- The West region consists of Mohave, La Paz and Yavapai counties.
  - For the North, South, East and West Regional Councils, no more than three council members may be from the same county.
- The Central region is comprised of Maricopa County.  
(A.R.S. § 41-4258)

Membership of the Councils consists of:

- A representative of a fire service from an urban or suburban area in the region.
- A representative of a fire service from a rural area in the region.
- A police chief.
- A county sheriff.
- A tribal representative.
- An emergency manager.
- A mayor.
- A county supervisor.
- Two at-large members.
- A representative from the Department of Public Safety.
- A public health representative.  
(A.R.S. § 41-4258)

### **Provisions**

- Alters the membership of the Councils to allow a designee of a police chief, sheriff, mayor and county supervisor to sit on the Councils.



# HOUSE OF REPRESENTATIVES

SB 1167

funeral escort vehicles

Sponsors: Senator Gray L

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**DPA**

**S/E** Committee on Natural Resources and Public Safety

**X** Caucus and COW

House Engrossed

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Senate Bill 1167 prescribes requirements for the appearance of funeral escort vehicles and of the uniforms of the drivers of funeral escort vehicles.

**History of the Strike-Everything Amendment**

A.R.S. § 28-1176 establishes the Off-Highway Vehicle Recreation Fund (Fund) consisting of monies appropriated by the Legislature, monies deposited from taxes on motor vehicle fuel, federal grants and private gifts and matching monies from federal, state, local or private entities. The monies in the Fund are appropriated to the Arizona State Parks Board (SPB). The SPB is allowed to spend 70% of the Fund monies to establish a facility development program based on the priorities established in the off-highway vehicle plan and for a matching fund program. No more than 18% of the monies the SPB receives may be spent for administration of the Fund. The Arizona Game and Fish Department (AGFD) is allocated 30% of the monies in the Fund for an information and educational program on off-highway vehicle recreation and for law enforcement for off-highway vehicle activities.

A.R.S. § 28-101 defines *all-terrain vehicle* (ATV) as a motor vehicle that satisfies all of the following:

- Is designed primarily for recreational nonhighway all-terrain travel.
- Is fifty or fewer inches in width.
- Has an unladen weight of eight hundred pounds or less.
- Travels on three or more low pressure tires.
- Has a seat to be straddled by the operator and handlebars for steering control.
- Is operated on a public highway.

*Off-road recreational motor vehicle* (ORRMV) is also defined in A.R.S. § 28-101 as a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. An ORRMV does not include a motor vehicle used for construction, building trade, mining or agricultural purposes.

A.R.S. § 28-1171 defines *off-highway vehicle* (OHV) as:

- A motorized vehicle when operated off of highways on land, water, snow, ice or other natural terrain or on a combination of land, water, snow, ice or other natural terrain.

- Includes a two-wheel, three-wheel or four-wheel vehicle, motorcycle, four-wheel drive vehicle, dune buggy, amphibious vehicle, ground effects or air cushion vehicle and any other means of land transportation deriving motive power from a source other than muscle or wind.
- Does not include a vehicle that is either:
  - Designed primarily for travel on, over or in the water.
  - Used in installation, inspection, maintenance, repair or related activities involving facilities for the provision of utility or railroad service.

**Provisions of the Strike-Everything Amendment**

***Off-Highway Vehicle User Indicia***

- Requires an Off-Highway Vehicle User Indicia (Indicia) issued by the Arizona Department of Transportation (ADOT) for the operation of an ATV and OHV in Arizona that meet the following criteria:
  - Is designated by the manufacturer primarily for travel over unimproved terrain.
  - Has an unladen weight of eighteen hundred pounds or less.
- Requires a person to submit an application and pay a fee to ADOT for an Indicia.
  - The Director of ADOT in cooperation with the Director of AGFD and the SPB sets the fee.
- Specifies that the Indicia is valid for one year from the date of issuance and is renewable.
- Mandates that ADOT must prescribe by rule the design and placement of the Indicia.
- Directs that 70% of the monies collected from the Indicia fee be deposited in the Fund and 30% be deposited into the Highway User Revenue Fund (HURF).
- Allows OHV users to cross State Trust Land (STL) on existing roads, trails, and designated routes while following all of the rules and requirements under a STL recreation permit.
  - All occupants of an OHV with an Indicia must obtain a STL recreation permit for all other authorized recreational activities on STL.
- States that the Indicia requirements do not apply to OHVs, ATVs, or ORRMVs that are used off-highway exclusively for the following purposes:
  - Agriculture.
  - Ranching.
  - Construction.
  - Mining.
  - Building trade purposes.
- Allows the operation of an ATV or OHV in Arizona without an Indicia if any of the following apply:
  - The person is participating in an OHV special event.
  - The person is operating an ATV or OHV on private land.
  - The person is loading or unloading an ATV or OHV from a vehicle.
  - During a period of emergency or if the operation is directed by a peace officer or other public authority.
  - If all of the following apply:
    - The person is not a resident of this state.
    - The person owns the vehicle.
    - The vehicle displays a current OHV user indicia or registration from the person's state of residency.
    - The vehicle is not in this state for more than 30 consecutive days.

***Registration/ Title/ License Plate/Vehicle License Tax***

- Allows a person to request a free motor vehicle registration if the vehicle meets on-highway equipment standards when:
  - Paying for an Indicia.
  - The owner signs an affidavit stating that the vehicle meets the on-highway equipment requirements and will be primarily used off-highway.
    - The free motor vehicle registration is not available for OHVs that come from the manufacturer with the equipment necessary to operate on-highway.
- Provides an exemption from registration for ATVs and OHVs that are only incidentally operated or moved on a highway.
- Requires ATVs and OHVs to obtain a title either on the sale of a new vehicle, ownership transfer of an existing vehicle, or no later than July 1, 2009 for currently owned vehicles.
- Requires ATV, OHV and ORRMV owners to apply for and ADOT to furnish a license plate.
- Requires the Director of ADOT to design an OHV plate in consultation with the AGFD and the SPB.
- Requires systematic replacement of existing ATV, OHV and ORRMV plates issued before January 1, 2009.
- Reduces the Vehicle License Tax for an ATV and OHV to three dollars if the following criteria are met:
  - Is designated by the manufacturer primarily for travel over unimproved terrain.
  - Has an unladen weight of eighteen hundred pounds or less.

***Off-Highway Vehicle Recreation Fund***

- Specifies that the Fund also includes monies from the fees collected from the Indicia.
- Designates 35% of the monies in the Fund to the AGFD.
  - Specifies that informational and educational programs must relate to safety, the environment and responsible off-highway vehicle recreation.
  - Directs AGFD to spend a portion of these monies on seven full-time employees to enforce OHV regulations.
- Provides the State Land Department with 5% of the monies from the Fund. The monies must be used for costs associated with OHV use of the land, to mitigate damage to the land, for necessary environmental, historical and cultural clearance or compliance activities and to fund enforcement relating to OHV use.
- Allocates 60% of the monies in the Fund to the SPB.
  - No more than 12% may be used for administration.
- Prescribes that the monies allocated to the SPB be used:
  - To designate, construct, maintain, renovate, repair, or connect OHV routes and trails and to designate, manage and acquire land for access roads, OHV recreation facilities and OHV use areas.
    - Prohibits the SPB from spending more than 35% (not including money allocated for administrative costs) for construction of new OHV trails.
  - For enforcement of OHV laws.
  - For OHV related informational and environmental education programs, information signage, maps and responsible use programs.
  - For the mitigation of damages to land, revegetation and the prevention and restoration of damages to natural and cultural resources, including the closure of existing access roads, OHV use areas and OHV routes and trails.

- For necessary environmental, historical and cultural clearance or compliance activities.
- Prohibits the monies in the Fund to be used to construct new OHV trails or routes on environmentally or culturally sensitive lands unless the appropriate land management agency determines that certain new trail construction would benefit or protect cultural or sensitive sites.
  - Defines *environmentally or culturally sensitive land*.
- Directs the SPB to give preference to applications for projects with mitigation efforts and for projects that encompass a large number of purposes for the monies allocated to the SPB in the Fund.
- Requires an annual report be made and submitted, beginning September 1, 2011 and on or before September 1 of each following year, to the Legislature and available to the public by any agency receiving monies from the Fund. The report must contain the following applicable information from the preceding fiscal year:
  - The amount of monies spent or encumbered for OHV law enforcement activities.
  - The amount of monies spent for employee services.
  - The number of full-time employees employed in connection with OHV law enforcement activities.
  - The amount of monies spent for information and education.
  - The number and specific location of verbal warnings, written warnings and citations given.
  - A specific and detailed accounting for all monies spent for construction of new OHV trails, mitigation of damages to lands, revegetation, the prevention and restoration of damages to natural and cultural resources, signage, maps and necessary environmental, historical and clearance or compliance activities.
- Removes the matching money requirements from the Fund.

#### ***Off-Highway Vehicle Operation Restrictions***

- Prohibits a person from driving an OHV off an existing road, trail or route in a manner that causes damage to:
  - Wildlife habitat.
  - Riparian areas.
  - Cultural or natural resources.
  - Property or improvements.
- Bans OHV use on roads, trails, routes or areas that are closed as indicated in rules or regulations of a federal agency, this state, a county or a municipality or by proper posting if the land is private land.
- Bans OHV use over unimproved roads, trails, routes or areas unless driving on roads, trails, routes or areas where such driving is allowed by rule or regulation.
- Directs a person to drive an OHV only on roads, trails, routes or areas that are opened as indicated in rules or regulations of a federal agency, this state, a county or a municipality.
- Restricts a person from operating an OHV in connection with the following where it is prohibited by rule, regulation, ordinance or code:
  - Damage to the environment, including,
    - Excessive pollution of air, water or land.
    - Abuse of the watershed, cultural or natural resources.
    - Impairment of plant or animal life.
- Prohibits a person from placing or removing a regulatory sign governing OHV use unless the person is an agent of the appropriate authority.

- Provides an exception from certain operation restrictions to a private landowner or lessee who is performing normal agricultural or ranching practices while operating an ATV or OHV on the private or leased land.
- Prescribes a Class 3 misdemeanor as a penalty for the above OHV operating violations.
- Clarifies that a judge may order a person to complete an approved safety course related to the off-highway operation of motor vehicles if found guilty of an OHV operation violation.

#### ***Off-Highway Vehicle Equipment Requirements***

- Requires an OHV that is operating in Arizona to be equipped with the following:
  - Brakes adequate to stop and hold the vehicle under normal operating conditions.
  - Lighted headlights and tail lights if operated at night.
  - A muffler or other noise dissipative device that prevents sound above 96 decibels.
  - A spark arrestor device.
  - A safety flag if operated on sand dunes or areas designated by the managing authority.
- Requires a person under 18 years of age to wear protective headgear if operating or riding an OHV on public or state land.
- Allows the AGFD in consultation with ADOT to:
  - Adopt rules necessary to implement the OHV equipment requirements.
  - Prescribe additional equipment requirements not in conflict with federal laws.
- Provides that the OHV equipment requirements do not apply to a private landowner or lessee performing normal agricultural or ranching practices while operating an ATV or OHV on private or leased land.

#### ***Miscellaneous***

- Defines *access road*, *closed course* and *mitigation*.
- Amends the definitions of *highway*, *off-highway recreation facility*, *off-highway vehicle*, *off-highway vehicle special event*, *off-highway vehicle trail* and *off-highway vehicle use area*.
- Clarifies that the AGFD must conduct or approve an educational course in OHV safety and environmental ethics.
- Allows any organization or individual that conducts an approved training or educational course on OHV safety or environmental ethics to collect a reasonable fee from the participant that is set by the Director of the AGFD by rule.
- Prohibits holding a race or other organized event on lands or highways except if authorized by the appropriate agency or landowner.
- Makes a violation of Title 28, Chapter 3, Article 20 a civil traffic violation, unless otherwise specified.
- Requires the SPB to update the OHV recreational plan every five years, make it open to public input and include priority recommendations for allocating monies in the Fund.
- Specifies an effective date of January 1, 2009.
- Makes technical and conforming changes.

#### **Amendments**

**The Committee on Natural Resources and Public Safety adopted the Strike-Everything Amendment.**



# HOUSE OF REPRESENTATIVES

SB 1225

ASRS; federal conforming changes

Sponsor: Senator Gorman

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**X** Committee on Public Institutions and Retirement

**DP** Caucus and COW

House Engrossed

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SB1225 conforms statutes pertaining to ASRS to changes in the federal tax laws made by Congress in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and various subsequent legislative acts.

## **History**

The Arizona State Retirement System (ASRS) was created in 1953 to provide retirement benefits to the employees of state, counties and municipalities, colleges and universities, and other political subdivisions in Arizona, including Arizona teachers. Currently, ASRS serves more than 750 employers and has more than 487,000 active, inactive, disabled, and retired members. Generally, all employees of an employer member who are engaged to work at least 20 weeks in a fiscal year and at least 20 hours per week qualify for membership in the retirement plan, and membership is mandatory for those employees who meet the eligibility criteria. Private and non-profit employers are not eligible for membership.

ASRS is described as a cost sharing, multiple employer, public employee, defined benefit retirement plan. *Cost sharing* means that both the employee and the employer contribute to the member's retirement as an equal percentage of compensation paid. The present contribution rate is 9.6%.

Currently, certain funds may be transferred from another qualified retirement plan, a tax deferred annuity, a deferred compensation plan or an IRA. Funds that can currently be rolled over include the following: a qualified retirement plan 401(a) or 401(k); a tax deferred annuity 403(b); a deferred compensation plan (457); a qualified annuity plan 403(a); an IRA; a simple IRA that has been established for at least two years. Effective for rollovers on or after January 1, 2007, the Pension Protection Act of 2006 allows the direct rollover of after-tax amounts directly to a Defined Contribution or a defined benefit (DB) plan, such as ASRS. At this time, it is not entirely clear whether after-tax contributions can only be transferred from another qualified plan described in Section 401(a) of the Code or whether after-tax contributions can also be transferred from 403(b) annuities and eligible 457(b) governmental deferred compensation plans. Prior to 2007, only qualified defined contribution (DC) plans could accept direct rollovers of after-tax contributions.

Section 415 of the Internal Revenue Code places a maximum dollar limit on the amount of benefits that may be paid each year by ASRS to a retired member. This maximum benefit

limitation is codified in A.R.S. § 38-769. The maximum dollar benefit that can be paid to members retiring in 2007 is \$180,000 and will increase to \$185,000 in 2008. EGTRRA modified the interest factors and mortality tables that must be used in this determination.

**Provisions**

- Clarifies the description of a direct rollover.
- Allows the ASRS to accept direct rollovers of amounts which may include after-tax contributions.
- Requires the ASRS to separately account for any after-tax amounts that are transferred, including earnings thereon.
- Provides that the direct transfer of any after-tax amounts to ASRS be from a source permitted under the Internal Revenue Code of 1986.
- Allows ASRS to properly administer the acceptance of after-tax contributions after the Code is clarified.
- Defines *eligible rollover distribution* in a manner consistent with other ASRS statutes.
- Changes the assumed interest rate and mortality tables used in calculating the maximum annual dollar limitation applicable to forms of distributions other than a straight life annuity.
- Provides references to the new interest factor and mortality tables required by EGTRRA.
- Excludes qualified transportation fringe benefits and certain cash benefits payable under a cafeteria plan from the definition of *compensation* as required by Section 415 of the Code.
- Updates the definition of *eligible rollover distribution* to allow direct rollovers of after-tax employee contributions held in ASRS to an IRA, a qualified 401(a) plan, or a 403(b) annuity contract.
- Allows non-spouse beneficiaries to make a direct, tax-free transfer of any death benefits to an individual retirement account or individual retirement annuity maintained in the name of the deceased member for the benefit of the non-spouse beneficiary (applicable to distributions made on or after January 1, 2007).
- Corrects an improper Code citation.
- Makes technical and conforming changes.



# HOUSE OF REPRESENTATIVES

SB 1083

gold star family license plates

Sponsors: Senators Waring, Gould, Representative Saradnik

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DPA Committee on Transportation

X Caucus and COW

House Engrossed

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Senate Bill 1083 creates the *Gold Star Family* special plate.

**The strike everything amendment to Senate Bill 1083 creates two new special license plates: 1) the *Gold Star Family* special plate for issuance to the immediate family members of servicemen and women of the United States military who die while on active duty and 2) an *Arizona Professional Basketball Club* special plate.**

## History

The Veterans' Donation Fund (Fund) was established under A.R.S. § 41-608. The fund consists of monies, gifts and contributions donated to the Arizona Department of Transportation (ADOT) and monies deposited pursuant to sections of statute relating to other military and veterans related special plates. Monies in the fund are continuously appropriated and are exempt from lapsing of appropriations.

In 2006 the legislature established an *Arizona Professional Baseball Club* special plate. Statute specifies that a special plate fund be set up and that monies are allocated to programs relating to youth and education development, housing for the homeless or low-income persons and health care for the indigent. According to ADOT there have been 4,176 *Arizona Professional Baseball Club* special plates issued.

Currently, the Motor Vehicle Division (MVD) issues special license plates for a variety of causes and organizations. According to MVD, there are 72 different types of license plates. Of those, there are approximately 34 special license plates that have been authorized by statute in addition to those approved by the License Plate Commission. An example of special plates includes the *Child Abuse Prevention* and the *Families of Fallen Police Officers* special plate.

According to MVD, it costs the department approximately \$32,000 to establish and issue a new special license plate. According to MVD the breakdown is:

|                |          |
|----------------|----------|
| Programming:   | \$19,765 |
| Forms:         | \$3,500  |
| Manufacturing: | \$8,340  |
| Shipping:      | \$520    |
| Total:         | \$32,125 |

**Provisions**

- Creates a *Gold Star Family* special plate which ADOT is required to issue to a person who submits proof that they are an immediate family member of a person who died while on active duty in the United States Military.
- Requires that monies in the Veterans' Donation Fund be used for the cost of creating and issuing the special license plate.
- Stipulates that ADOT design the plate in cooperation with an organization formed for the support of mothers who have had children die while on active duty in the United States Military.
- Allows *Gold Star Family* plates to be combined with personalized special plates at the discretion of the ADOT Director.
- Requires the registrant to pay both the personalized special fee as well as the *Gold Star Family* special plate fee.
- Establishes a twenty-five dollar fee for the plates and for renewal of the special plates.
- Specifies that eight dollars be used for the special plate administration fee to be deposited by ADOT into the State Highway Fund and seventeen dollars go as an annual donation to the Veterans' Donation Fund.
- Establishes an *Arizona Professional Basketball Club* special plate if \$32,000 is paid to ADOT by December 31, 2008.
- Requires the entity providing the \$32,000 to design the special plate.
- Stipulates that the design and color of the special plate is subject to ADOT approval.
- Allows *Arizona Professional Basketball Club* plates to be combined with personalized special plates at the discretion of the ADOT Director.
- Requires the registrant to pay both the personalized special fee as well as the *Arizona Professional Basketball Club* special plate fee.
- Establishes a twenty-five dollar fee for the plates and for renewal of the special plates.
- Specifies that eight dollars be used for the special plate administration fee to be deposited by ADOT into the State Highway Fund and seventeen dollars go as an annual donation to the *Arizona Professional Basketball Club* special plate fund.
- Requires the ADOT Director to administer the *Arizona Professional Basketball Club* fund and to allocate monies from the fund through a private Arizona Professional Basketball Organization's Foundation qualified as a 501 (c) (3) for federal income tax purposes.
- Requires the ADOT Director to forward monies to the *Arizona Professional Basketball Club* special plate fund on an annual basis.
- Stipulates that not more than ten percent of monies deposited in the fund shall be used for administering the fund and that monies be continuously appropriated.
- Allows for the first \$32,000 received from registration fees be used to reimburse the entity that paid the implementation fee.
- Requires the State Treasurer to invest and divest monies in the fund at the direction of the ADOT Director.
- Makes technical and conforming changes.

**Amendments**

**Transportation**

- Made technical and conforming changes.



# HOUSE OF REPRESENTATIVES

## SB 1165

salvage title; stolen vehicle title

Sponsor: Senator Gorman

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**DPA** Committee on Transportation

**X** Caucus and COW

House Engrossed

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Senate Bill 1165 allows insurers to obtain salvage titles more quickly in cases where the vehicle owner has been paid for the loss, but the paperwork cannot be obtained. SB 1165 also establishes a stolen vehicle certificate of title.

### **History**

Arizona law defines “salvage vehicle” as a vehicle, other than a nonrepairable vehicle, of a type that is subject to titling and registration pursuant to this chapter and that has been stolen, wrecked, destroyed, flood or water damaged or otherwise damaged to the extent that the owner, leasing company, financial institution or insurance company considers it uneconomical to repair the vehicle.

A “nonrepairable vehicle” is defined as a vehicle of a type that is otherwise subject to titling and registration pursuant to this chapter that has no resale value except as a source of parts or scrap metal, is a vehicle that has been completely stripped of parts or a completely burned vehicle to the extent that there are no usable or repairable body or interior components.

Many consumers today use Carfax or similar services in order to obtain a vehicle history before making a purchase. Often times this can prevent used car buyers from purchasing vehicles with costly hidden problems. Currently, an unrecovered stolen vehicle is branded as salvage when the insurer pays a total loss settlement. If the vehicle is recovered following payment of a total loss settlement but is relatively undamaged, the insurer pays for a level-3 inspection by the Motor Vehicle Division (MVD) and if the vehicle passes the level-3 inspection, a clean title is issued. However, a consumer purchasing a vehicle history report will receive a title history indicating “clear, salvage, clear” and the report warns the consumer about purchasing a vehicle with a salvage history. Senate Bill 1165 establishes a “stolen vehicle” title and allows the title history on undamaged, recovered total loss thefts to indicate “clear, stolen vehicle, clear” thereby, according to the insurance industry, providing consumers with a more accurate picture of a vehicle’s history.

### **Provisions**

- Allows an insurance company to apply for a “stolen vehicle certificate of title” in the same manner as for a salvage certificate of title or nonrepairable vehicle certificate of title.
- Allows for an insurance company to apply for a salvage certificate of title or nonrepairable vehicle certificate of title within thirty days after acceptance by the owner of an offer in

settlement of a total loss if the insurance company is unable to obtain a properly endorsed certificate of title or a lien satisfaction, if applicable.

- Stipulates that the application includes evidence that the insurance company has made two or more written attempts to obtain a certificate of title and lien satisfaction, if applicable.
- Requires the applicant to include the appropriate fees with the application.
- Requires the insurance company to indemnify and hold harmless Arizona Department of Transportation (ADOT) for any claims resulting from the issuance of a salvage or nonrepairable vehicle certificate of title.
- Requires ADOT to issue a stolen vehicle certificate of title as a result of a total loss settlement if the vehicle was stolen but recovered and is:
  1. Not wrecked or stripped of essential parts.
  2. Not missing the airbag or component parts to make the airbag deployment system operate.
- Defines the term “stolen vehicle certificate of title”
- Makes technical and conforming changes.

**Amendments**

**Transportation**

- Made technical and clarifying changes.



# HOUSE OF REPRESENTATIVES

SB 1473

logo sign programs; ADOT

Sponsors: Senator Gould: Representative Groe

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**DP** Committee on Transportation

**X** Caucus and COW

House Engrossed

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Senate Bill 1473 allows twenty-four hour pharmacy services to participate in the Arizona Department of Transportation's existing "Logo Sign Program". In addition, SB 1473 allows the Arizona Department of Transportation (ADOT) to enter into revenue sharing agreements with ADOT's contracted third party that installs, maintains and leases advertising space for logo signs.

## **History**

ADOT's Logo Sign Program was created by the Legislature in 1986. The program allows ADOT to contract with a third party to create and maintain service information or "logo" signs which give motorists information about the services provided at highway interchanges. The third party, Arizona Logo Sign Group, furnishes and maintains the logo signs and leases advertising space to approved vendors. Currently, vendors providing gas, food, attractions, lodging or camping may advertise on logo signs.

Currently, ADOT has oversight of the contract between the third party and vendors but does not share in any of the proceeds generated by the program.

## **Provisions**

- Allows twenty-four hour pharmacies to participate and advertise with the Highway Logo Sign program.
- Allows ADOT to enter into a revenue sharing agreement with ADOT's third party contractor and requires that all money received from the revenue sharing agreement be deposited in the State Highway Fund.
- Makes technical and conforming changes.



# HOUSE OF REPRESENTATIVES

## SB 1120

navigable stream adjudication commission; continuation

Sponsors: Senator Flake, Representatives Brown, Burns J, Mason

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**DP** Committee on Water and Agriculture

**X** Caucus and COW

House Engrossed

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SB 1120 continues the Arizona Navigable Stream Adjudication Commission through June 30, 2012.

### History

If a body of water or watercourse was *navigable* at the time of statehood, title to the bed of the stream or lake passed to the state upon admission into the Union. A *navigable watercourse* is defined as one that, at the time of statehood, was used or susceptible of being used, in its ordinary and natural condition, as a highway for commerce, over which trade and travel were or could have been conducted in the customary modes of trade and travel on water. Title to beds of waters that were not navigable at the time of statehood may pass to private landowners.

Although each state holds title to the beds underlying its navigable waters, courts have held that these lands are owned subject to a public trust and cannot be conveyed by the state unless such a conveyance promotes a public purpose. (This is known as the Public Trust Doctrine.)

Since 1985, a series of lawsuits and legislative enactments have attempted to resolve the issue of streambed ownership in Arizona. Laws 1987, Chapter 127, disclaimed the state's interest in all watercourses in the state except for the Gila, Verde and Salt Rivers. That law was determined to be unconstitutional by the Court of Appeals in 1991 (Arizona Center for Law in the Public Interest v. Hassell). In response to the Hassell case, the Legislature established the five-member Arizona Navigable Stream Adjudication Commission (ANSAC) in 1992. Created as a separate agency, ANSAC's charge is to review evidence presented by the State Land Department and other persons regarding watercourse navigability and has held more than 130 hearings to date.

On February 13, 2001, the Court of Appeals held the statutory standards used by ANSAC to determine navigability invalid. Laws 2001, Chapter 166 repealed earlier legislative ratifications of ANSAC's findings and directed the ANSAC to begin the adjudication process again for the estimated 39,039 watercourses in Arizona. Since then, ANSAC has been extended twice and is scheduled to sunset on June 30, 2008.

### Provisions

- Extends the Arizona Navigable Stream Adjudication Commission until June 30, 2012.
- Contains a retroactive effective date of July 1, 2008.



# HOUSE OF REPRESENTATIVES

SB 1158

continuation; veterinary medical examining board

Sponsors: Senator Gray C; Representative Nelson

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**DP** Committee on Water and Agriculture

**X** Caucus and COW

House Engrossed

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SB 1158 continues the Arizona State Veterinary Medical Examining Board until July 1, 2018.

## **History**

The Arizona State Veterinary Medical Examining Board (Board) was established by the Arizona Legislature in 1967 (Laws 1967, Chapter 76, Section 2). The Board consists of nine Governor appointed members: five licensed veterinarians and four public members, including one who represents the livestock industry. The Board is a 90/10 board, which means ninety percent of the monies collected are retained by the Board and the remaining ten percent goes to the State General Fund. There are two primary programs administered by the Board: the licensing program and the regulation and investigative program.

The Board licenses veterinarians, veterinary technicians, veterinary premises and crematoriums. Veterinarians and veterinarian technicians must pass a licensing test, and each premise and crematorium must be inspected before receiving a license. Licensing fees are collected for each type of license.

The regulation and investigative program handles consumer complaints regarding veterinarians and clinics. The Investigative Committee reviews each complaint and prepares a recommendation for the Board. The Board may dismiss the complaint, issue a letter of concern or take disciplinary action. Disciplinary action may include a reprimand, probation, suspension or revocation of a license.

The Joint Legislative Audit Committee assigned the sunset review of the Board to the Senate Natural Resources and Rural Affairs and House of Representatives Water and Agriculture Committee of Reference (COR). The COR met November 8, 2007 and recommended a ten-year continuation for the Board.

## **Provisions**

- Continues the Board until July 1, 2018.
- States the purpose of the Board is to promote the safe and professional practice of veterinary medicine.
- Contains a retroactive effective date of July 1, 2008.



# HOUSE OF REPRESENTATIVES

SB 1181

Arizona beef council; sunset continuation

Sponsor: Senator Flake

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**DPA** Committee on Water and Agriculture

**X** Caucus and COW

House Engrossed

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SB 1181 continues the Arizona Beef Council for ten years.

## **History**

The Arizona Beef Council (Council) was established by the Legislature in 1970 to develop and maintain state, national and foreign markets for Arizona beef and beef products (Laws 1970, Chapter 87 § 2). The Council consists of nine members appointed by the Governor: three members represent range cattle producers, three members represent cattle feeders and three members represent dairymen.

An assessment of \$1 is charged for each head of cattle sold in Arizona and is collected by the Arizona Department of Agriculture (Department) at the same time the brand inspection fee is collected. The assessment is divided between the Council (\$0.45) and the National Cattlemen's Beef Promotion and Research Board (\$0.50). The Department retains five percent of each fee for administration and collection purposes.

The Joint Legislative Audit Committee assigned the sunset review of the Council to the Senate Natural Resources and Rural Affairs and House of Representatives Water and Agriculture Committee of Reference (COR). The COR met November 8, 2007 and recommended a ten-year continuation for the Council.

## **Provisions**

- Continues the Council for ten years.
- Includes a purpose clause which states the Legislature intends to continue the Council as a self-financed program to maintain state, national and foreign markets for Arizona beef and beef products.
- Contains a retroactive effective date of July 1, 2008.

## **Amendments**

### **Water and Agriculture**

- Corrects language relating to the continuation date.



# HOUSE OF REPRESENTATIVES

SB 1373

poultry husbandry

Sponsors: Senators Burns, Aguirre, Arzberger, et al

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**DP** Committee on Water and Agriculture

**X** Caucus and COW

House Engrossed

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SB 1373 authorizes the Arizona Department of Agriculture to adopt rules for egg processing plants, sanitation standards, egg producing and poultry husbandry practices.

## **History**

The Arizona Department of Agriculture (Department) consists of three main divisions – Animal Services, Environmental Services and Plant Services. The Animal Services Division protects the health, quality and marketability of Arizona's animals and animal products; enforces laws concerning the movement, sale, importation, transportation and processing of livestock; and conducts food quality and safety inspections of milk, meat products produced and processed in Arizona and all eggs and egg products produced in Arizona.

The Egg Products Control Program (Program), which is part of the Animal Services Division, is charged with inspecting all shell eggs and egg products sold in Arizona, and is financed by a fee placed on every case of eggs sold in Arizona. The Program also inspects locations where eggs are sold or stored. The inspections verify that eggs and egg products meet quality, weight, labeling and refrigeration requirements.

Poultry husbandry is the practice of breeding and raising poultry for consumption and is not currently regulated by the Department.

## **Provisions**

- Authorizes the Department to adopt standards, by rule, for egg processing plants and shell egg sanitation.
- States that any chemicals, sanitizers, egg soaps, egg oils and other substances used for processing shell eggs must be approved by the Director of the Department.
- Requires the Director of the Department to adopt rules for poultry husbandry and egg production in Arizona. The rules will only apply to egg producers with at least 20,000 egg laying hens.
- States that poultry husbandry practices are a statewide matter and are not subject to further regulation by a county, city, town or political subdivision in Arizona.
- Defines *candling*, *egg products*, *eggs* and *processed*.
- Makes technical and conforming changes.



# HOUSE OF REPRESENTATIVES

SB 1394

racing; commission; department; continuation

Sponsor: Senator Gray C

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X Committee on Water and Agriculture

Caucus and COW

House Engrossed

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SB 1394 continues the Arizona Department of Racing and Arizona Racing Commission for eight years, and establishes the *Racing Investigation Fund* to facilitate payments for the costs associated with the application review of racetrack permittees.

## History

The Office of the Auditor General (OAG) conducted a performance audit and sunset review of the Arizona Department of Racing (Department) and sunset review of the Arizona Racing Commission (Commission) pursuant to a May 22, 2006, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq., and published in May 2007.

The Department was created in 1982 to regulate and supervise pari-mutuel racing and wagering conducted in Arizona. The Department is responsible for regulating all commercial and county fair horse racing meetings, greyhound racing meetings, and the concomitant pari-mutuel wagering on those events. In addition, the Department collects pari-mutuel taxes and other fees for distribution to the State General Fund and eight statutorily established funds. Its director is appointed by the Governor for a term of five years.

The Department supports 46.5 FTEs and has an operating budget of slightly more than \$3.3 million for FY 2008.

The Commission has existed since 1949 and, prior to 1982, it performed the regulatory activities the Department now performs. The Commission focuses its efforts on supervising the racing director and approving or rejecting his policy recommendations; allocating live racing dates; and, approving permits to conduct racing. The Commission consists of five members that the Governor appoints for five-year terms.

The Committee of Reference (Senate Natural Resources and Rural Affairs Committee and the House Water and Agriculture) convened December 19, 2007 to review the OAG's performance audit. The COR recommended continuation of the state agencies for eight years through July 1, 2016, and also recommended that the racing law be amended to require monetary transactions go through the Department.

As part of its statutory obligation to regulate all aspects of racing in Arizona, the Department conducts an extensive application review of permittees every three years, which is paid for by the applicant. The review requires an applicant to submit all materials mandated by statute and

code, and it focuses on three key areas: financial position, business continuity, and property/ownership structure, according to the Department.

Current law specifies all monies received by the Department must be remitted to the State General Fund, but does not provide the Department a mechanism to recapture monies to cover the costs of investigations. As defined by statute, a permittee is a person, partnership, association, or corporation authorized to conduct racing and wagering at the state's five commercial tracks, 15 county fairs, and 83 off-track betting facilities.

**Provisions**

- Continues the Arizona Racing Commission and the Arizona Department of Racing for eight years through July 1, 2016.
- Establishes the *Racing Investigation Fund (Fund)* to consist of monies deposited for the projected costs of permittee investigations. The *Fund* will be administered by the Arizona Department of Administration (DOA).
- Requires monies deposited into the *Fund* be a reasonable amount based on the racing director's request to cover the cost of investigations.
- Stipulates *Fund* monies are continuously appropriated and subject to Arizona law relating to the lapsing of appropriations.
- Requires *Fund* distributions to be made upon the racing director's instructions, and be limited to the expenses authorized under horse and dog racing law and those incurred in compliance with the state's procurement code which includes open and competitive bidding on such services.
- Requires the DOA to refund a permittee the difference between the amount deposited in the *Fund* and the total actual cost of the investigation, upon the racing director's instruction.
- Contains a retroactive effective date of July 1, 2008.